

FILE COPY

Vol. II

1917-1918

1917-1918

1917-1918

1917-1918

1917-1918

1917-1918

1917-1918

1917-1918

1917-1918

1917-1918

1917-1918

1917-1918

1917-1918

1917-1918

1917-1918

1917-1918

1917-1918

1917-1918

1917-1918

1917-1918

1917-1918

1917-1918

1917-1918

1917-1918

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 427

THE FRANKLIN NATIONAL BANK OF FRANKLIN
SQUARE, APPELLANT,

vs.

THE PEOPLE OF THE STATE OF NEW YORK

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

VOL. II

Record from Supreme Court of the State of New York,
Appellate Division, Second Department—Continued
Case and exceptions (County of Nassau, Special
Term II)—Continued

	Original	Print
Matthew N. Chappell (Recalled) ..	514	388
Willard K. Simmons (Recalled) ..	523	395
William J. Boyle ..	533	402
Charles W. Green ..	540	407
Colloquy ..	550	414
Testimony of Arthur T. Roth ..	554	417
Plaintiff's motion to strike out evidence and for judgment (County of Nassau) ..	673	503
Plaintiff's Exhibits ..	711	529
1, 2, & 3—Advertisement appearing in Long Island Daily Press, March 10 and March 24, 1947 and in Nassau Daily Review-Star, March 17, 1947 ..	711	529
4, 5, 6—Advertisements appearing in News- day, May 8, June 17, 1948 and January 4, 1949 ..	715	530
7, 8, 12—Advertisement and Circular; Ad- vertisement appearing in Newsday and in Nassau Daily Review-Star, March 29, 1950 ..	717	530

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DEC. 23, 1953.

Record from Supreme Court of the State of New York,
Appellate Division, Second Department—Continued
Case and exceptions (County of Nassau, Special
Term II)—Continued

Plaintiff's Exhibits—Continued	Original	Print
9A—Envelope containing various forms	718	531
9B—Envelope containing forms for opening of a Savings Account	719	532
9C—Envelope containing forms for opening of a Children's Savings Account	720	533
9D—Deposit Slip for Savings Account	721	534
9E—Card for opening Savings Account	722	535
9F—Card for opening Children's Savings Ac- count	723	536
9G—Card for opening Special Checking Ac- count	724	536
9H—Deposit Slip for Checking Account	725	538
9I—Envelope containing forms for opening a Special Checking Account	726	539
9J—Business Reply Card	727	540
9K—Draft	728	541
10A—Business reply envelope	729	542
10B—Letter signed by Arthur T. Roth	731	542
10C—Application Slip	732	543
11—1948 Annual Report of the Defendant- Respondent Bank	733	544
13A—Deposit Slip for Savings Account	735	578a
13B—Withdrawal slip for Savings Account	736	579
14—"Dime-Saver" issued by Defendant-Re- spondent Bank (omitted in printing, pur- suant to stipulation)	736	
15 A, B, C—Letters dated April 16, 1947; April 3, 1947; and March 25, 1947 from Deputy Superintendent of Banks to Arthur T. Roth	736	579
16—Identification Card of Bank Examiner, Arthur R. Seaton	738	581
17—Examiner's Comments, dated April 10, 1950	739	581
18-28 (inclusive)—Exterior and interior photographs of Bank	741	585
29—Photographs of Deposit Slip for Check- ing Account and Savings Account (copy) (omitted in printing)	763	
30 & 31—Photographs of interior of bank	765	598
32—Photographs of withdrawal slip and blot- ter	769	598
33—Certificate of State Superintendent of Banks	770	599

INDEX

iii

Record from Supreme Court of the State of New York,
Appellate Division, Second Department—Continued
Case and exceptions (County of Nassau, Special
Term II)—Continued

Plaintiff's Exhibits—Continued

	Original	Print
34—Certificate of Comptroller of the Cur- rency, No. 12997	772	600
35—Certificates authorizing change of name and change of corporate title	773 775	601 602
36—Financial statement		

Defendant's Exhibits:

A—Preliminary Architect's Drawing of bank building and proposed new wing	777	602
B—Architect's Drawing of westerly addition to bank (omitted in printing, pursu- ant to stipulation)	778	603
C—Brochure distributed by Defendant, show- ing sketches of various portions of the bank and facilities offered to the pub- lic	779	605
D-R—(Omitted in printing, pursuant to stipulation)	780	
D-G—Forms of Questionnaires used in connection with poll survey	780	621
H—Report of Bureau of Census, U. S. Department of Commerce	781 781	621 622
I—Aerial Survey of Glen Cove	781	622
J—Aerial Survey of Levittown		
K—Map showing location of clusters of Nassau County	781	622
L—Street and Road Map of Nassau County	782 782	622 622
M—Tippett's Random Sample Numbers		
N—For identification—Tippett's Table of Random Sampling Numbers	782 782	622 622
O—Array Sheets—Urban Population	783	623
P—List of Clusters for Glen Cove	783	623
Q—Pre-listing Sheets for Cluster No. 15		
R—Array Sheet for Unincorporated Areas	783	623
S—Forms used by Hofstra College in survey covering services utilized by financial institutions	785	624
T-BB—(Omitted in printing, pursuant to stipulation)	786 786	 625
T—928 Questionnaires	786	625
U—22 Sets of Pre-listing Sheets		
V—Computations showing Federal and State Income Taxes	786	625

Record from Supreme Court of the State of New York,
Appellate Division, Second Department—Continued
Case and exceptions (County of Nassau, Special
Term II)—Continued

Defendant's Exhibits—Continued

	Original	Print
W—For Identification—Regulation Q of the Federal Reserve Bank of New York	786	625
X—For Identification—Regulation D of the Board of Governors of the Fed- eral Reserve System	787	625
Y—U. S. Savings Bonds Poster	787	625
Z—Calculation Sheets of Professor Brum- bach	787	626
AA—The definitions used in connection with Hofstra Survey	787	626
BB—Classified Response Lists	787	626
CC—Hofstra College Survey Report (Pages 13-34)	788	626
DD—Additional Computations	809	639
EE—Typical Bank Advertisements	813	642
FF-II—(Omitted in printing, pursuant to stipulation)	814	643
FF—For Identification—Annual Report of Defendant for year 1946	814	643
GG—For Identification—Article appear- ing in July, 1947 issue of Bank- ing Magazine	814	643
HH—For identification—Article appear- ing in Magazine Digest	814	643
II—For Identification—Article appear- ing in February, 1945 issue of Readers Digest	814	643
JJ—Photograph of Elmont Office of De- fendant	815	644
KK—Photograph of Levittown Branch of Defendant Bank	817	646
LL—Photograph of Rockville Centre Branch of Defendant Bank	819	648
MM—Table Showing Increase in Deposits of Defendant Bank	820	649
NN—Stipulation, dated January 15, 1951 ..	822	649
OO—For Identification—Opinion of Comp- troller of the Currency, dated July 10, 1939 (omitted in printing, pursuant to stipulation)	825	652
PP—Form 2129-1 of the Treasury Depart- ment Office of Comptroller of the Currency	827	652

INDEX

V

Record from Supreme Court of the State of New York,
Appellate Division, Second Department—Continued
Case and exceptions (County of Nassau, Special
Term II)—Continued

	Original	Print
Defendant's Exhibits—Continued		
QQ—SS—(Omitted in printing, pursuant to stipulation)	828	653
QQ—Savings Bonds Poster	828	653
RR—Form of Payroll Savings Purchase Order for U. S. Savings Bonds	828	653
SS—Literature regarding U. S. Savings Bonds	828	653
TT & UU—Letters dated March 29, 1947 and June 5, 1947 from President to Deputy Superintendent of Banks	828	653
Opinion, Cuff, J. (Nassau County)	830	654
Stipulation as to plaintiff's exhibits	856	672
Stipulation as to defendant's exhibits	857	673
Stipulation settling case	858	674
Order settling case	858	674
Order filing record in appellate division	859	674
Notice of appeal to Court of Appeals (County of Nassau)	863	675
Order of reversal (Appellate Division, Second Judicial Department, Borough of Brooklyn)	865	676
Judgment of reversal (County of Nassau)	868	677
Opinion of the Appellate Division, Second Department	871	679
Dissenting opinion, Nolan, J.	876	682
Clerk's certificate (omitted in printing)	877	
Proceedings in Court of Appeals of the State of New York	879	683
Order granting motion for leave to file a brief amicus curiae	879	683
Opinion, Desmond, J.	881	684
Dissenting opinion, Fuld, J.	888	690
Remittitur	892	692
Judgment of affirmance by Supreme Court on Remittitur from Court of Appeals	896	693
Affidavit	899	695
Petition for appeal	903	697
Order allowing appeal	904	697
Assignment of errors and prayer for relief	905	698
Citation (omitted in printing)	908	
Bond (omitted in printing)	909	
Statement required by Paragraph 2, Rule 12 of the rules of the Supreme Court (omitted in printing)	911	
Statement of points to be relied upon and designation of parts of record to be printed	914	700
Order noting probable jurisdiction	918	701

The Court: That is right, yes.

[fol. 509] A. —most of whom are unemployed and have no means.

The Court: They are disqualified to make deposits in some form or another. Now he wants you to assume that, and the question is, looking at the table, not did you say so before, but is it your opinion now that if that were the situation you would be able to say that a majority of the people of Nassau County do not understand the meaning of those terms?

The Witness: If that were the situation as you described it, I would not be able to draw the conclusion which is drawn from this report.

Mr. Rollins: Thank you. That is all.

Redirect examination.

By Mr. Grimes:

Q. And if, quite contrary to the fact, you had confined your questioning to children of the age of two, do you think you might have results different from Table No. 1 in Exhibit CC?

A. I think it is highly likely that they would be entirely——

Q. Very likely, yes. Or if you asked 928 Eskimos who did not understand the English language, you might have different responses?

Mr. Rollins: May I object to it. This is absolutely absurd.

The Court: Yes, I will sustain the objection.

Q. Now will you state why you believe that 928 answers accurately reflect the knowledge——

[fol. 510] Mr. Rollins: That is objected to because it is mere speculation, calling——

The Court: Let counsel finish. Accurately reflect——

Q. The opinion of all persons in Nassau County?

The Court: All the people in Nassau County?

Mr. Grimes: Yes.

Mr. Rollins: I object as mere speculation. This witness

testified his conclusion is based primarily upon the interviews and reports of those interviews, none of which reflect that anyone had a job, had any property, or was eligible for a bank account.

The Court: I will allow the question, but the witness has already answered that question. I am going to allow him to answer it again, and I will tell you almost how to answer it. It is the method that you followed in laying out the poll, is it not, that leads you to the conclusion that you have come to, that is, that by interviewing 928 people you have been able to get a sample of the entire population of Nassau County?

Mr. Rollins: As to knowledge or geographical position?

Mr. Grimes: May we have the answer to that, if you don't mind?

Mr. Rollins: I cannot see any logic in that at all.

The Witness: That is entirely correct. It was the methods that went into the laying out of the sample. [fol. 511] The Court: And let us add to that the execution of those methods.

The Witness: And the execution of those methods.

The Court: That is your answer.

The Witness: Could I add one more statement here? Supplemented by my experience with this type of sampling in previous surveys.

The Court: All right. That is proper to add. That is his answer.

Mr. Grimes: I have just one more question.

Q. May bank accounts be opened for as little as one dollar? If you know.

The Court: You do not have to answer that. The answer is yes.

Mr. Rollins: Your Honor can take judicial notice of the subject. I gave your Honor the case of Slater v. Judd.

The Court: That is the only amount I ever had to deposit. I know it very well.

Mr. Grimes: Just one more question along the same lines.

Q. In this survey you treated everybody in Nassau County as an actual or potential depositor in a bank, did you not?

Mr. Rollins: Judge, I object to that. It is leading the witness, first of all.

Q. As a part of the survey.

[fol. 512] The Court: No, I will sustain the objection, because that is going further than we need to go. The evidence here is that in their method they set up an arrangement whereby everybody in Nassau County had an equal chance to be interviewed. That is what Doctor Chappell said, and he rather adhered to that.

Mr. Rollins: Judge, there is also——

The Court: I do not think we need to go any further——

Mr. Grimes: Very well.

The Court: ——about deposits. Everybody had an equal chance.

Mr. Rollins: First time I ever saw any scientific witness testify that Nassau County has no person who is subject to Welfare, and that is what they ask the Court to take judicial notice of. They say everybody works here and everybody has money in Nassau County.

Mr. Grimes: No such thing was testified to.

Mr. Rollins: In the Welfare Department.

The Court: Are you through with this gentleman?

Mr. Rollins: Yes, sir.

(Witness excused.)

Mr. Grimes: Would this be an appropriate time for a five-minute recess, sir?

The Court: I think so. (Recess.)

[fol. 513]

AFTERNOON SESSION

Mr. Grimes: If your Honor please, my attention has been called to the fact that there are 22 sets of prelisting sheets which I offered in evidence and which apparently were not marked. That followed the stipulation following Mr. Ohnmacht's testimony on the stand. These should be marked in evidence.

The Court: They were offered but not marked; there was some mistake.

Mr. Grimes: I would like to have them marked.

The Court: Let us put them all in evidence under that one exhibit.

Mr. Rollins: I wonder if I interposed my objection.

Mr. Grimes: You interposed your objections to everything. You said it was incompetent, irrelevant, immaterial and hearsay, that these men were not licensed detectives—

The Court: One was offered in evidence. Now let us put the others along with the one under the same exhibit number on the general stipulation that, Mr. Rollins, the witnesses would give substantially the same testimony with respect to the balance.

Mr. Rollins: And all those, of course, are made with respect to the one, Defendant's Exhibit U.

The Court: Now we are ready for the next witness.

[fol. 514] Mr. Grimes: Defendant's Exhibit Q went in separately, your Honor. The others went in separately. They are all of the same category.

The Court: Put them in.

Mr. Grimes: I do not care how they are marked.

The Court: They are not going to receive individual treatment at any time in my judgment about this. Next witness.

Mr. Grimes: This witness has been sworn and is recalled for further direct.

MATTHEW N. CHAPPELL, recalled.

Direct examination.

By Mr. Grimes:

Q. Professor, you heard the testimony of Mr. Brumbach?

A. Yes.

Q. If I asked you the same questions, would your answers be the same?

The Court: Substantially.

Q. Substantially?

A. Substantially, yes.

Q. Are there any differences that you can think of, anything you would like to say?

Mr. Rollins: Your Honor, I did not make an objection, but I will reserve my objections in the form of a motion to strike out his testimony.

The Court: That is right.

[fol. 515] Mr. Rollins: If your Honor will permit me to do that.

The Court: That is right. That runs with all this testimony about the poll, the sample, I should say.

A. I think there is nothing substantially that I would add to it.

Q. Professor, in view of the additional documentary proof which has gone in, and especially what we know as our Exhibit CC, being pages 14 through 34 of the brochure which you prepared, I would like you to express to the Court your opinion as to the method used in the survey and the accuracy of the results thereof as shown on Defendant's Exhibit CC, being the tables.

A. I would say, Judge, that this was the most accurate study that I have ever worked on.

The Court: You would say what you said when you were on the witness stand before?

The Witness: That is correct.

The Court: That, to your knowledge, this is the best form of study that could be devised as far as you know?

The Witness: So far as I know for this study of Nassau County.

The Court: That is in so far as the survey is concerned. What was the other part of your question?

Mr. Grimes: To express his opinion as to the accuracy of the survey.

The Witness: I would say that this study has a very small bias.

[fol. 516] The Court: Without going into detail, has it produced——

The Witness: It has produced accurate results.

The Court: Would you say that those results are as accurate as any that in your experience you could create by any form of sampling?

The Witness: Yes. This is as accurate a form of sample as we could use for this problem.

Q. Thank you. Now I believe you wish to submit in evidence and to the Court a different weighting based upon men and women as an alternative for his consideration, is that correct?

A. That is correct.

Q. You feel it is necessary to do so for the sake of completeness, is that right?

A. For completeness, that is all.

Q. Would you state the reason for that.

A. The reason for this exhibit is that in any form of sampling some people are harder to get hold of than others, and men are harder to get hold of than women. As a result, even when you make five calls on a home you will come up with fewer men than you will women, so that in this sample we had a total of 928 people of whom 522 were women and 406 were men. Actually, the proportion of men and women in the adult population of Nassau County is 49 per cent men and 51 per cent women. The data that is in this report and in Exhibit CC is based on the 928 which we interviewed.

[fol. 517] Q. It does include also a breakdown of men and women, is that right?

A. Yes, it includes a breakdown for men and women as well as the total.

Q. Now you want to make a different basis weighted in proportion to the population, is that correct?

A. Yes. Taking the sample of men and the sample of women and giving the men a 49 per cent weight in proportion, which is their proportion in the population, and women 51, I have then computed what the results would have been in answer to questions 1, 2 and 3 for men and women.

Q. In what form do they appear on that document which you have in your hand?

A. They appear on this document in lead pencil beside the corresponding figure which is in that form.

The Court: I think with that explanation you ought to offer this in evidence.

Mr. Grimes: I offer it in evidence, yes.

Mr. Rollins: I object to the offer in evidence upon the grounds it is incompetent, irrelevant and immaterial, and violates the hearsay rule. The opinion expressed therein

is not based upon this witness's own personal knowledge but upon information which is hearsay from others, and the opinion therein expressed is not based upon any hypothetical question put to this witness and is put without any regard to the assumption as to the truth of the competent evidence in the record.

The Court: I will receive it in evidence.

[fol. 518] The Witness: May I make one statement?

The Court: Yes.

The Witness: I started in answer to one question some time ago to remark that there was a slight bias in our results. This corrects the bias. By "bias" I mean that the results might be somewhat different, although we don't know how different they might be, and this shows that there is little or no difference.

(Received in evidence and marked Defendant's Exhibit DD.)

Mr. Grimes: No further questions.

Cross-examination.

By Mr. Rollins:

Q. This form that was submitted to the public generally of the 928 bore printed thereon "Hofstra College Workshop," is that right?

A. Hofstra Psychological Workshop.

Q. That survey was not made for the college, was it?

A. Well—

The Court: How do you mean, "for the college"? No, it was made for the customer, the client.

Q. Was that intended to gain entrance for these interviewers?

A. No.

Q. Were these reports—

A. Was what intended to gain entrance?

Q. These interviewing sheets.

[fol. 519] A. The respondent did not see the interviewing sheets other than as he saw the interviewer writing on it.

Q. What did you get in dollars and cents for your efforts in this case?

A. Is it necessary for me to answer that, Judge?

Mr. Rollins: On the question of credibility.

The Court: I think so, Doctor.

The Witness: All right. Does that mean what was the workshop paid for the total survey?

Mr. Rollins: That is right.

The Court: What did you personally receive?

The Witness: What did I personally get?

The Court: Let us take it this way: You have a regular salary at the institution?

The Witness: I have a salary at the college.

The Court: Did you receive something over and above that?

The Witness: I received something over and above that.

Q. That is all I am interested in, in what you received over. I am not interested in what you get from the college.

The Court: Do you want him to divulge that? Is it important?

[fol. 520] Mr. Rollins: I want to see if it is big enough, and I just want to see if the university of the State here will lend itself to a litigation. I am interested as one of the assistants of the Attorney General.

The Court: All right. I should not admit it for that reason.

Mr. Rollins: No, but I say I would not press it——

The Court: Let me just say this, and then if you want to press the question, you may.

Mr. Rollins: All right, I withdraw the question.

The Court: Where a witness indicates that something is personal and in his judgment he would rather not disclose it——

The Witness: I don't mind disclosing it, Judge.

The Court: It is not necessary.

Mr. Rollins: Since your Honor feels that it should not be done, I will not press it.

Q. You are not a licensed detective, are you?

A. No.

Q. This entire sample survey was under your direction and supervision?

A. Yes.

Q. You had complete charge thereof?

A. Yes.

Q. And you knew, did you not, that when you gave the questionnaires to interviewers to go to the public to obtain the information upon which the report here is based and submitted in evidence, it would be used in this litigation; [fol. 521] you knew that, did you not?

A. I did not know that it would be used in this litigation.

Q. Did you know it would be used in a litigation?

A. I did not know that it would be used in a litigation.

In fact, I—well, I will just say that.

The Court: Just answer the question, that is all.

Q. When was the first time you knew that the data that you obtained and presented in court today would be used in a litigation?

A. After I presented it to the client.

Q. Who was the client?

A. The client—I should say after I presented it to Franklin National Bank. The original client—may I explain that, Judge?

The Court: I think we know it. The original client was the Nassau County Clearing House Association but the poll has been paid for by the defendant in this case.

The Witness: That is right.

Q. What I want to know is the date that you knew that this information you gathered would be used in a civil lawsuit.

A. I can't say the dates.

Q. Approximate month.

A. The month was in December. I would think the date was probably about the middle of December when we first showed the people at the Franklin National Bank the results we obtained.

Q. Who told you to show it to the bank—the defendant in this case?

A. The defendant Nassau County Clearing House said [fol. 522] that we were to deliver copies.

Q. Whom did you speak to at the Franklin Square National Bank of Franklin Square?

A. We spoke to—

Q. Not "we", I am talking "you".

A. I spoke to Mr. Roth, Mr. Green, and also to the counsel.

Q. That is Mr. Grimes, of the firm of Alley, Cole, Grimes & Friedman, the attorneys for the Franklin Square National Bank in this case?

A. Yes.

Q. And that was in December 1950?

A. Yes.

Q. When was your poll concluded or all of your work?

A. It was concluded just about that time. It was about at the conclusion of the poll after we had gotten some results together.

Mr. Rollins: That is all, if the Court pleases. Let the record show that the reason I am not cross-examining this witness is that we have been on trial since two weeks ago, and I believe I have made it apparent from the cross examination of the so-called scientist who collaborated with this witness that there is no basis for the opinion expressed in Defendant's Exhibit CC, and that I believe I established that the information and opinion expressed is not reliable to support any material fact in evidence, and I feel no useful purpose could be served by cross-examining this witness, for if I did cross-examine this witness, my intention would be to adduce the proof established already through the [fol. 523] cross examination of Richard Brumbach, the previous witness, and Willard K. Simmons, the mathematician who testified a few days ago.

The Court: Let that appear on the record.

Mr. Rollins: And rather than waste the time of the Court, if I establish no reliability upon the entire poll for reasons hereafter stated upon my motion to strike out all of the testimony on this poll, I will say to the Court now that I will not cross-examine this witness.

The Court: All right. Any other witness now?

By Mr. Grimes:

Q. Professor Chappell, you understood that the arrangements for the conduct of this poll were originally made with

the president, President Adams, of Hofstra College, did you not?

A. Yes.

Mr. Grimes: No further questions.

(Witness excused.)

Mr. Grimes: Mr. Simmons, please.

WILLARD K. SIMMONS, recalled.

Direct examination.

By Mr. Grimes:

Q. Mr. Simmons, the last time you were on the stand his Honor the Judge asked you about the accuracy of the methods of determining this poll and whether you [fol. 524] had done so. Now, have you done so since that time in connection with two specific figures on that poll which would illustrate the method of determining accuracy of the Hofstra survey?

A. Yes, I have.

Q. Would you now, please, answer the Judge's question put to you two days ago by way of illustration and in as simple terms as the subject permits.

A. May I see a copy of the report please, if I can call attention to the two figures I used. (Handed to Witness.) Your Honor, we calculated with assistants, and I checked the work, to develop the margin of error which you requested last time or asked if I had done last time for the figure 85.8 which appears here in Table I for the persons making accurate statements regarding savings accounts, and similarly for thrift accounts, except that in that case we took the sum of two percentages here for persons making accurate statements or persons who say it is the same as a savings account—in other words, for the persons making accurate statements it is 7.8 per cent; for those who say it is the same as a savings account it is 11.7. The total then is 19.5, and it is that percentage, 19.5, and the 85.8 for which these two margins were computed. The error margin for

the former, the 85.8 per cent, came out to be 2.6 per cent, and by way of interpreting that in a standard way as it is used in statistics it would be construed to mean that the chances are less than one in three that had the survey been conducted throughout Nassau County not on a sample basis but asking every adult defined in the population under study the questions in exactly the same way they were [fol. 525] here and under the exact procedure—otherwise the same question and everything else except with respect to the sample, the sample would not be limited—why, the chances I would say then are less than one in three that we would have gotten an answer which would have departed from 85.8 per cent by more than 2.6 per cent.

Q. In other words, that would be the departure on either side?

A. And the most probable figure would be 85.8, but to say, of course, that you would get exactly the same, there is almost no chance of getting any one single figure, if you carry it out far enough, but the most probable figure is your 85.8, and if you take a range around it on either side, 85.8 plus 2.6 and 85.8 minus 2.6, the chances are two out of three that the figure for the entire county would be within that range. Now, that would be called one margin of error, they call it, or one standard deviation from the error margin. If we doubled that percentage 2.6, making it 5.2, then the odds go way up. The chances there would be 19 out of 20 that you would not miss your 85.8 by more than 5.2 percentage points in either direction. Similarly, for the three standard errors here, that is your 2.6 percentages margin times 3 gives you 7.8 per cent, and on the basis of sampling errors there we could say that the survey conducted throughout the entire county not on a sample but on a total basis would lie somewhere within the range 85.8 plus the 7.8 to 85.8 minus 7.8 per cent. Now, the other percentage I just mentioned, the 19.5—

Q. What are the odds there?

A. Oh, I did not mention that. The odds there are three [fol. 526] out of a thousand, that is, three out of a thousand that you would exceed the range, and 997 out of 1000 that you would fall within the range.

Q. Within that range of three sigmas?

A. Three sigmas, yes.

Q. Repeat the process now on the 19.5 figure.

A. All right. Will it suffice perhaps to say that the sigma there was 2.1 instead of 2.6, and twice the 2.1 would give you 4.2. In other words, in that case the odds would be 19 out of 20, better than 19 out of 20, that you would lie within the range of 19.5 minus 4.2 to 19.5 plus 4.2. Then your three sigma level there is 6.3 per cent, and there the odds go up to 997 in a 1000, the odds being 997 out of 1000 that your true value would be 19.5 plus or minus 6.3 percent, percentage points in this case.

Q. Have you finished?

A. Yes, I think that is it.

Q. You gentlemen who are experts in this field have used the term "bias" and "estimate" throughout your testimony. Would you explain what persons in your field mean when they say "bias."

A. Yes. The term "bias" —

The Court: We have that in the record.

Mr. Grimes: All right, sir.

The Court: Doctor Chappell gave us that.

Q. Would you explain what the term "estimate" means as persons in your business use that word.

A. Well, an estimate in this case means what it means normally except with regard to its precision and the implication of precision that go with it. For example, if we were able to make this fine survey we just talked about and talked to everybody in Nassau County, we would come out with a percentage.

Q. That would be exact?

A. That would be exact.

Q. That is what you call the true value?

A. That is the true value, the true population value.

Q. When you take less by way of a sample, you call the result an estimate?

A. An estimate. And if you take your sample scientifically, then you can say your estimate will be correct within the range of the error margin as computed.

Q. And just as you have given it.

A. That's right.

Q. And that is what you mean by "estimate"?

A. Yes.

Q. Not guesswork?

A. No. That is well-established in statistical theory.

Q. It is a very close approximation of the true value?

A. A very close approximation.

Q. Differing only because you did not take the census type of survey?

A. Indeed.

Q. Is that correct?

A. Yes.

Q. You have conducted many surveys and participated in many surveys, is that not true?

A. Yes, I have.

Q. And being a consultant on this particular survey, you are familiar with all steps taken, whether you took them or not, are you not?

A. Yes, I am familiar with them.

Q. And the results?

A. Yes, I am.

Q. Now would you express to the Court your opinion, based upon your experience, as to the methods used in this survey and the accuracy of the results attained?

[fol. 528] Mr. Rollins: If your Honor please, I think there are two questions.

Mr. Grimes: There are.

The Court: There are two questions but the other witness answered the same.

Mr. Rollins: I object to the latter part of the question, which tends to obtain an opinion upon the survey made—namely, that the survey tends to show by inference and examination of Exhibit CC that most of the people in Nassau County in the proportion enumerated in Defendant's Exhibit CC do not have a knowledge in particular of the three trade terms—thrift account, special interest account, and compound interest account.

The Court: I do not think you ought to limit your objection to that. I think your objection ought to be wider and let it cover every figure contained in the exhibit in so far

as this gentleman gives his opinion. But, remember, his opinion now is only based upon Defendant's Exhibit CC.

Mr. Rollins: In effect, giving verification thereto and expressing his own opinion thereon.

The Court: No, his opinion is given as to Defendant's Exhibit CC with respect to the methods pursued in producing that exhibit.

Mr. Rollins: And the results obtained.

The Court: That is one, and the other is the accuracy of the results obtained. He is only giving his opinion as to those things.

[fol. 529] Mr. Rollins: Indirectly thereby ratifying what is already said with reference to this. So I therefore object to the question, your Honor, on the ground—

The Court: I will allow it.

Mr. Rollins: —that it is incompetent, irrelevant and immaterial and tends to violate the hearsay rule. Then, again, it is an attempt to obtain expert opinion on matters which are not in evidence, certainly not within the personal knowledge of this witness, and must be primarily based upon information given to him through the interviewers obtaining their information from persons, which is hearsay, and I say that an opinion of an expert can only be expressed from the witness's personal knowledge or upon a hypothetical question based upon matters in evidence, and I say the question is improper and incompetent, and upon the other grounds specified I object to the question.

Q. Will you please confine your answer to my question to the matters in evidence.

The Court: Do you understand the question?

The Witness: I am not quite sure.

The Court: The question simply is this: Give your opinion by reason of your long experience, education and so forth, in this line of work as to the methods pursued in this poll and as to the accuracy of the results attained. What is your [fol. 530] opinion? In other words, could it have been done in a different way which would have produced better results, with better methods employed, or is this the best method you know of?

The Witness: All right, I would say that this survey has

been done by what I would consider to be an extremely high standard of survey design, sample design, and administrative control, so far as I have gone through the entire thing with respect to sample and knowing generally operation throughout. To be sure, there is a wide range of possible methods that might have been used in sampling and other things. This would seem to be more than adequate. I consider it to be a highly satisfactory plan set up here to produce estimates which would come within a range of error which would come almost for certain, within the extremely high odd, within a range of error necessary for the purpose that it was set out to produce.

Mr. Rollins: I do not think it is a proper answer. He did not answer your Honor's question. He says it is a good one but he did not say if there is a better one.

The Court: He can only answer what he thinks. Now, with respect to the accuracy of it, will you state your opinion. That is the same question.

The Witness: My opinion is that it would seem to me almost beyond belief that the percentages [fol. 531] shown here should deviate more than a two or three sigma error margin. It would just be out of this world for that to happen as I see it.

Q. Then would you say that the accuracy of this poll—and the methods therein pursued which have produced these figures—in your opinion is an accurate poll?

Mr. Rollins: That is objected to, if the Court please, upon the grounds incompetent, irrelevant and immaterial, and does not take in a hypothetical question based upon matters in evidence, and violates the hearsay rule.

The Court: I will allow it.

A. It is.

The Court: It has produced an accurate result?

The Witness: I consider it an extremely accurate poll and extremely accurate result.

The Court: All right. That is his opinion.

Q. Your answer has been based upon your knowledge of each step in the method used in the poll, is that right?

A. To be sure.

The Court: The entire method. He is familiar with it and he has based it all on the method. I put that in my question. [fol. 532] Mr. Grimes: I want to make that very clear. May we have Defendant's Exhibit CC here.

Q. There are already in evidence pages 14 through 34. Would you look at the first part. You are familiar with the first part of Defendant's Exhibit CC, starting with the flyleaf and going down through the purpose, the method, the sample, and the explanation?

A. Yes, I am familiar with that.

Q. The summary of results, you are familiar with that?

A. Yes.

Q. Would you say that this is a fair and concise statement of the summary of the results?

A. Yes, I would say it is a fair summary.

Q. And of the method used?

A. And of the method, yes, sir.

Q. And whatever is stated under the various descriptions here?

A. Yes, to be sure.

Mr. Grimes: Now, if it pleases the Court, I am going to offer the pages 1 through 14 in evidence not for the truthfulness of what they say, not on that theory—although we maintain that they are truthful—but as a summary of the testimony of Doctor Chappell, Mr. Brumbach, and Mr. Simmons.

Mr. Rollins: That is objected to, if the Court pleases, as an attempt to get in evidence a record not under oath.

The Court: I will have to sustain the objection. [fol. 533] Mr. Grimes: Sir, it is offered on the theory of an accurate summary of testimony.

The Court: I have to sustain the objection.

Mr. Grimes: Very well.

The Court: We have the testimony.

Mr. Grimes: I am sure you have the power to do it. Very well, sir. That is all. Thank you.

Mr. Rollins: No questions.

(Witness excused.)

WILLIAM J. BOYLE, residing at 10 Croydon Drive, Mer-
rick, New York, called as a witness in behalf of the defend-
ant, being duly sworn, testified as follows:

Direct examination.

By Mr. Grimes:

Q. What is your occupation, Mr. Boyle?

A. Banker.

Q. What bank?

A. Franklin National Bank, Franklin Square.

Q. What is your position there?

A. I am vice president in charge of the installment loan
department, or as it is commonly known, the consumer
credit department.

Q. How long have you been vice president of a bank?

A. I have been a vice president approximately two years.

Q. How long have you been in charge of the installment
loan department?

A. About five and a half years.

[fol. 534] Q. There has been testimony here that in the
summer of 1947 a new alteration or addition or a new
building was built, and in reference to that where was the
installment loan department located from the time that
new addition was built?

Mr. Grimes: For the record I would like to say that has
been referred to as building No. 2 on one of the plaintiff's
exhibits.

Q. You have been in court during this trial, have you not?

A. Yes, I have.

Mr. Grimes: If we could have the exhibit—

The Court: We do not need it. Tell us, was it in building
No. 2?

The Witness: We moved the department into building 2
before the building was officially opened.

The Court: Whereabouts in building 2? What floor?

The Witness: It was on the ground floor, in the rear of
the building.

The Court: All right. That is the answer.

Q. And it has been there since this addition was put on, has it?

A. That is correct.

The Court: He just said that.

Mr. Grimes: I am sorry, I did not hear that.

Q. Briefly, what is the installment loan department; what services does it render?

[fol. 535] A. The installment loan department makes loans to consumers repayable on an installment basis in amounts up to \$5,000 to purchase consumer goods or services.

Q. Could you name a few of the types of goods and services purchased by consumers under the installment loan method?

A. Well, some of the goods purchased would be automobiles, boats, airplanes, white goods, such as refrigerators, stoves.

The Court: All right. That is enough. He just said some. Similar things.

The Witness: And similar things.

Q. As of the time this present action was brought against the Franklin Square Bank, what banking services were rendered by the bank in what is known as the family lobby?

A. Well, there are many services, if I may refer to the list here, they are so varied and diversified.

Q. I think you may.

Mr. Rollins: We got that from the examination before trial when Mr. Roth testified and I read it into the record. It is merely repetitious.

The Court: I thought we had it.

Mr. Rollins: In the examination before trial, yes. I read it in.

The Court: Mr. Grimes, what is the purpose of this testimony? I thought we had all the testimony on location of activities within the bank.

Mr. Grimes: There is one other purpose.

[fol. 536] Q. Are you familiar with the employees in the bank, as to the number of employees engaged in the various departments on the ground floor in the family lobby.

A. Yes, I am.

Q. Will you state the number of employees classified by the occupation they perform or the departments they are in?

A. Well, in the family lobby there are 21 persons employed in the installment loan department, there are 6 people in the savings section, there are 4 persons in the special checking account section, and there are 3 persons in what we call the new account section.

Q. Have you figured out the percentages as regards the number of employees in the installment loan as against savings and the other departments?

Mr. Rollins: That is objected to, if the Court pleases, as calling for an opinion of this witness.

The Court: I will sustain the objection. The figures are there. The percentages can be computed.

Q. The next question that I am going to ask bears upon the charge of deliberate intent to misrepresentation. Did you, Mr. Boyle, about the time of the opening of the family lobby describe in a publication the character of the Franklin Square Bank?

A. Yes, I did.

Q. What publication did you write an article for?

A. I wrote an article for the July issue of the Midcontinent Banker.

Q. I show you a document and ask you whether this is the article.

A. Yes, this is the article. Correction, that was [fol. 537] the August issue, August 1947.

Q. Published about the time of the opening of the new lobby, is that correct?

A. That is right.

Q. Does that article truly and accurately represent the purposes of the family lobby and its exterior and interior design and decoration?

A. Yes, it does.

Mr. Grimes: I offer it in evidence.

Mr. Rollins: That is objected to, if the Court pleases, as self-serving, matters of fact for the Court to determine.

The Court: Must be sustained.

Mr. Grimes: Fraud, sir, and deception are charged here.

The Court: Yes, I understand the purpose of your offer and the authorities which allow it in, but I am going to exclude it.

Mr. Grimes: I most respectfully except to your Honor's ruling.

Q. Is the family lobby used for display purposes of many wares, goods and merchandise of many items?

A. Yes, it is.

Q. Has that been the case since it was built?

A. Yes, since July of 1947. I don't think there has been a month that there hasn't been various items on display in the lobby.

Q. And on the opening of the lobby there was an airplane on display, a large part of one, was there not, an airplane minus one wing?

A. That's right.

Q. You have had automobiles on display there?

A. That is correct.

[fol. 538] Q. Many other like items?

A. That is correct.

Q. All of which are purchased by installment loan or may be purchased by installment loan, is that correct?

A. That is correct.

Q. Has the Franklin Square Bank ever held itself out to the public to be or pretended to be in any way a savings bank?

A. No, it hasn't.

Q. As a matter of fact, the present savings alcove was not even in the family lobby of the bank when the family lobby was originally built, was it?

A. That is correct.

Q. About how much later was it constructed?

A. I'd say it was completed at least a year and a half after the new addition was put onto the building.

Mr. Grimes: Now we have a document which was marked for identification, being the ground plan prepared by Mr. Carlson.

Q. I show you Defendant's Exhibit B for identification and ask you to examine the various designations as to the services rendered in the various parts of the ground floor of the family lobby and ask you whether or not these designations accurately represent the banking functions done at the bank in the particular locations which the designations indicate.

The Court: You have seen that before, have you not, Mr. Boyle?

The Witness: Yes, I have.

The Court: You can use your former knowledge. Does it do that?

[fol. 539] The Witness: This indicates the space allotted to the various services in the family lobby.

The Court: That is what counsel asked you. Yes, he says it does indicate.

Mr. Grimes: I offer it in evidence.

Mr. Rollins: No objection.

(Received in evidence as Defendant's Exhibit B.)

Mr. Grimes: No further questions.

Cross examination.

By Mr. Rollins:

Q. Mr. Boyle, I show you a printed copy of what purports to be a financial statement of the defendant Franklin National Bank of Franklin Square, as of December 31, 1950, and ask you whether the same was caused to be printed and circulated publicly by the defendant?

A. Yes, this is our published annual statement.

Q. Does the financial statement and figures reflect the true and accurate condition of the bank, the defendant in this action, its growth for the periods 1950, 1949, and 1948, respectively?

A. Yes.

Mr. Rollins: I offer it in evidence.

The Court: No objection to the bank's statement, is there?

Mr. Grimes: No objection.

(Received in evidence and marked Plaintiff's Exhibit 36.)

Mr. Rollins: Does your Honor want to look at [fol. 540] the growth of that bank? They claim they have been frustrated.

Mr. Grimes: Do you suggest that proves we have not been?

The Court: Let us not get into that now.

(Witness excused.)

CHARLES W. GREEN, residing at 88 Delmar Avenue, Franklin Square, New York, called as a witness in behalf of the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. Grimes:

Q. What is your occupation, Mr. Green?

A. Vice president of the Franklin National Bank.

Q. How long have you been vice president of that bank?

A. Since October of 1947.

Q. Would you state what your education is first, and following your education, what your experience and work has been in the field of business, sales, public relations and banking, starting right from the beginning.

A. Graduated from Parker High School of Dayton, Ohio; had two years of college work at the University of Dayton, spent about eighteen months in the service the first world war; returned to a connection with the National Cash Register Company of Dayton, taking training in sales and promotion work; spent a year with National Cash Register Company as a salesman; left to go over to the International Business Machines Corporation, the Food Store Division, [fol. 541] and was with them from 1920 through 1938, at which time I became a distributor for the Allied Store Utilities Corporation, in New York.

Q. What was the character of your work with International Business Machines Company?

A. Sales.

Q. Were you with sales, or what type of field?

A. Sales, sales promotion, market analysis. Began as a salesman, became assistant divisional sales manager, then

divisional sales manager, then the manager of the national chain store division, and later sales manager in the metropolitan area of New York.

Q. In connection with your occupations, first as to sales, and any other positions you may have had, have you taught salesmanship?

A. I have. I taught sales courses with International Business Machines Corporation and also regional sales courses for the various divisions.

Q. Have you dealt in the subject of advertising? Did you while you were with Business Machines Corporation?

A. Yes.

Q. To what extent?

A. From the study of the various divisions—I am speaking now of geographic divisions—determined the types of advertising which would convey impressions of product and influence choice to the purchase of the equipment which we manufacture.

Q. Did you also serve on the Committee of Economic Development?

A. I did.

Q. During what year?

A. 1944. The directors of our institution loaned me to the Committee for Economic Development.

Mr. Rollins: If your Honor pleases, all this is very interesting but I do not see what the purpose of it is.

[fol. 542] The Court: I think the qualifications have gone far enough. On the question of qualifications, I think that, as far as the issues in this case are concerned, the witness has stated his experience sufficiently now.

Mr. Grimes: Very well, sir.

Q. Have you also served as Director of Public Relations for the American Bankers Association?

Mr. Grimes: If I may be permitted to ask just that one additional question.

A. Yes, I have for a period of a year and a half.

Q. Then you returned to Franklin National Bank?

A. That's right.

Q. When did you first go with the defendant bank?

A. In January of 1943.

Q. And your present position there is vice president and director of public relations?

A. That's right.

Q. It has been testified here that savings banks and other types of banks do considerable advertising. Is it true that among your duties in your position is the duty of watching the advertising of other banks?

A. That is true. That is a large part of my duty.

Q. Before getting into advertising, in your observation and your experience and in your opinion is the Franklin National Bank in competition with other banks and financial institutions?

A. It is definitely in competition with all other financial institutions.

[fol. 543] Q. What about savings banks in New York?

A. In competition with them also.

Q. In what way?

A. Because the savings banks in New York City, as well as other areas, are attempting to attract deposits from all segments of population in the area, and because of their efforts to attract these deposits, heavy emphasis is placed on advertising which places us in direct competition.

Q. What are the forms of advertising that they use, the New York City savings banks?

The Court: To accomplish that last result?

Mr. Grimes: Yes.

A. Not all of them use all of the complete list, but the complete list is used by all or some of them: newspaper advertising, direct mail, billboards, car cards, radio, television, the distribution of football scores, baseball scores, the lending of umbrellas on rainy days—all come under the category of advertising which is used extensively by a great many banks as advertising media.

Q. Is your answer confined to savings banks located in New York City?

A. No. That includes all banks located in New York City and other financial institutions as well.

Q. Is the defendant bank in competition, in your observation and experience, with other commercial banks?

A. In direct competition, yes.

Q. Do they also advertise?

A. They do.

Q. What would you say as to the extent of the competition that the Franklin Square Bank has with other commercial banks?

A. You mean in dollar volume, or advertising, or what? [fol. 544] Q. Would you characterize it as keen competition?

A. Extremely keen competition.

Q. And there is one savings bank in Nassau County, is that correct?

A. That's correct.

Q. Are you in competition with that, sir?

A. We are.

Q. Now will you state the degree of competition between the defendant bank and savings and loan associations, whether located in Nassau County or elsewhere.

A. Competition between our bank and savings and loan associations is extremely keen not only in Nassau County but in the metropolitan area, as well as from foreign States across the continent.

Q. Do the various types of financial institutions, competitors of yours, as you described them, advertise in Nassau County and in journals that reach Nassau County?

A. They not only advertise in Nassau County papers, but they use the metropolitan press, which is circulated in Nassau County.

Q. Now I show you a group of documents and ask you whether or not these are, to your personal knowledge, advertisements placed in various newspapers by the competitors which you have described.

A. They are.

Mr. Grimes: I offer them in evidence.

Mr. Rollins: I object to these, if the Court please. It deals with advertising by savings banks and savings and loan associations, Federal and State.

The Court: Let me see them a moment.

Mr. Rollins: I contend they are incompetent, irrelevant and immaterial.

[fol. 545] The Court: I will receive them in evidence.

(Received in evidence and marked Defendant's Exhibit EE.)

Q. Is advertising by these competitors of the Franklin Square Bank on the increase?

A. It is on the increase.

Q. And has been for some time?

A. That is correct.

Q. And some institutions offer a higher rate of interest or pay for money deposits than others, is that right?

A. That is correct.

Q. From what quarter, if you can state, do you feel the competition for deposits or investments, whatever they are called—the type of situation where people put money into a financial institution and expect some return on it—comes?

Mr. Rollins: That is objected to on the ground there is no basis for the opinion.

The Court: Sustained. Mr. Grimes, how many more witnesses did you propose to call?

Mr. Grimes: I think just Mr. Roth, sir.

Mr. Rollins: I am not going to cross examine this witness at all.

Q. Mr. Green, what types of financial institutions offer the service whereby they agree to pay a return, whether they call it interest or dividends, for deposit of people's money?

The Court: We have that, surely, in the record.

[fol. 546] Q. What terms are used by these competitor institutions of the defendant bank?

The Court: Do you mean in those advertisements?

Mr. Grimes: No, by competitors in general, including the advertisements.

The Court: All right.

A. They use the term savings accounts, savings bank and savings and loan associations, and the commercial banks, use other terms, such as compound interest, special

interest, thrift accounts, and even a combination of the three, compound interest thrift accounts.

Q. In your capacity as director of public relations and as vice president of the bank, have you studied the problem of advertising for some time, some number of years?

A. I have studied it intently.

Q. What is your opinion as to the efficacy, that is to say, the usefulness in advertising purposes of these various terms that are used by these various banks?

Mr. Rollins: That is objected to, if the Court pleases.

The Court: I am going to sustain the objection to that question. I think that is a question for the Court to determine ultimately.

Mr. Grimes: My question at this point, your Honor, is designed to elicit from him whether they have equal drawing power or not equal drawing power.

The Court: I think it is a dangerous question for the [fol. 547] defendant to ask, because of its being the major issue in the case. I do not think it should be answered by a witness, even an expert.

Mr. Grimes: Your ruling, sir, leaves me at a little loss to know how to proceed. May I inquire as to whether in his observation people understand these various terms?

The Court: I would say no, I would not do that, because whatever you do in that affirmative manner, I must allow the Attorney General to negative it by calling other people to give the same views, and I do not think individual views have any basis in a proceeding of this kind. I think you put forward the facts and I have allowed the poll evidence to go in, which is hearsay, and then it is for the Court to determine these other questions.

Mr. Grimes: I trust when you say it is hearsay, it violates the hearsay rule—

The Court: I am not saying it violates the hearsay rule. If it did, I would not allow it in evidence. I say it is hearsay; it may be hearsay but an exception to the rule. I say you can develop the facts from which the Court can draw the conclusions, but I do not think that the subject matter is a proper one to ask individual witnesses their opinion or their observations with respect to those four terms.

Mr. Grimes: I am asking him, sir, actually as an expert.

The Court: Even as an expert, I do not think it is admissible.

[fol. 548] Mr. Grimes: I feel I must except to your Honor's ruling.

The Court: Yes, take an exception.

Q. Did you, prior to any discussion by you or anyone else as to the advisability of having Hofstra College make a poll or a survey as to the understanding of the four banking terms testified to by people in Nassau County, yourself make an informal poll of any sort?

A. I did.

Q. Was the Hofstra survey made after you made the informal poll?

A. It was.

Q. What did your informal poll consist of?

Mr. Rollins: That is objected to, if the Court please.

The Court: I must sustain the objection to that.

Q. What is the banking area, if that phrase is sufficiently definite, the principal banking area of the defendant bank?

A. Nassau County.

Q. Do you regard all persons in Nassau County as potential depositors in or dealers with the bank?

Mr. Rollins: That is objected to, if the Court please.

The Court: It is harmless. I think I will allow him to answer.

Mr. Rollins: The whole State of New York, he expects business. He won't refuse it.

The Court: We will allow that one.

A. I do believe that every person in Nassau County is a prospect.

[fol. 549] The Court: So does every other bank.

Mr. Rollins: Forty-six of them. That is what they call competition.

Q. Have you an opinion as to the approximate percentage of the total bank's business which is done with persons, firms or corporations in Nassau County as regards the savings deposits of a bank?

Mr. Rollins: Which bank are you talking about?

The Court: His bank.

Mr. Grimes: Yes, his.

Mr. Rollins: In relation to what is that?

The Court: The percentage of banking.

Mr. Rollins: In the whole county?

The Court: Yes.

Mr. Rollins: I object to it, if the Court pleases; not within the knowledge of this witness. It would be hearsay.

The Court: I think I will sustain it.

Mr. Grimes: My question is, what ratio does the amount of savings deposit business done by the defendant bank in Nassau County bear to that done outside of Nassau County?

Mr. Rollins: You mean by this defendant bank?

Mr. Grimes: Yes.

The Court: All right, can you give us that? That is confined to deposits, reception of deposits?

Mr. Grimes: Yes, sir.

The Witness: I would say 95 to 97 per cent.

[fol. 550] Mr. Rollins: Are we talking about time deposits or both?

Mr. Grimes: Savings deposits.

The Witness: 95 to 97 per cent of it comes from within Nassau County.

Mr. Grimes: You may examine.

Mr. Rollins: No questions.

(Witness excused.)

COLLOQUY

Mr. Grimes: Mr. Roth, please.

The Court: I do not think we are going to take Mr. Roth for tonight. I think we had better let that go until tomorrow morning. Did you have any witnesses you want to call?

Mr. Rollins: No, sir. Those are all my witnesses. I think I anticipated everything they intend to prove.

The Court: It is rather late, so perhaps we ought to recess. We will have to devote some time tomorrow to this, at any rate.

Mr. Rollins: If your Honor pleases, may I at this time

request that Plaintiff's Exhibit 16 be substituted by a photostatic copy thereof. It is the authority conferred upon Mr. Seaton, and by keeping it as a court record he would not have his credentials. Mr. Roth of the defendant bank was nice enough to have it photostated.

The Court: No objection?

Mr. Grimes: None whatsoever, and we would like to make the same request about all of our exhibits.

Mr. Rollins: I have no objection.

Mr. Grimes: You have no objection to that, have you?

Mr. Rollins: No objection.

[fol. 551] (Trial Continued.)

Mineola, New York,

February 2, 1951

Mr. Grimes: Judge, we have had prepared really for the Court but also for our own purposes some very large charts, known as bar charts in the trade, which show the percentages in graphic form, that is, bars of different colors, as to who knows what and who does not know what, to represent the results of the Hofstra poll. The record is voluminous and the exhibits are voluminous. My thought is this: We are quite prepared to offer them in evidence as a graphic representation of whatever has been testified to already, and will, if the Court thinks it will be helpful. They are very easily followed. If the Court feels it would be helpful, perhaps with the Court's and counsel's permission, I would like to show a sample.

The Court: Yes, would you mind letting me see them, because they may be of some help even to the Attorney General.

Mr. Grimes: My man must have taken them for checking purposes at the moment. I thought if your Honor cared to have them, I would recall Doctor Chappell who I expect will testify that he has checked the charts against the percentage figures and that they jibe and are accurate, and offer them in evidence.

The Court: I do not think you need to call Professor [fol. 552] Chappell just to give that.

Mr. Rollins: Judge, I do not think you need it. If it

were a jury, it would be a different story. It will only be a replica of Defendant's Exhibit CC.

The Court: My thought about it is this, Mr. Rollins, and I will let you somewhat decide it. You have opposed the taking of the evidence of this poll, first on the general ground that it violates the rules of evidence to receive it at all, and secondly by your cross examination—in the event that that is resolved against you—I notice you have tried to establish that it is not valuable as a reflection of the knowledge of the people of Nassau County.

Mr. Rollins: This is a State law.

The Court: Yes.

Mr. Rollins: It is sixty-two counties. That is only one county.

The Court: I notice from your cross examination in the event that the poll was received that you have endeavored to show that it is not an accurate reflection and for that reason it is not valuable. Now I would like you to have the benefit of these charts, to look at them before they are offered in evidence, because they may demonstrate your point.

Mr. Rollins: Judge, the stipulated figures of counsel and myself, which are not before your Honor, belie the alleged scientific statement on that.

The Court: Aside from that, if these charts would serve your purpose——

[fol. 553] Mr. Rollins: Wouldn't help me.

The Court: ——and Mr. Grimes wants them in evidence, then I would receive them.

Mr. Rollins: It is just a matter of general knowledge.

The Court: Then I think, Mr. Grimes, as long as the Attorney General seems to think he does not want them, I would have to exclude them, because they are simply an amplification of what is already in the word picture.

Mr. Grimes: That is true, sir. It says the same thing in a different and we think more graphic manner.

The Court: Yes. Now, the Attorney General objects, and I think he is on sound ground when he objects, to the Court's receiving something which merely amplifies the testimony already before us. So, we will leave that out.

Mr. Grimes: All right, sir.

Mr. Rollins: I think the graphs there as part of Defendant's Exhibit CC state in percentages. They could not add any more than what is there.

The Court: That is my disposition of that.

Mr. Grimes: Shall we proceed now?

The Court: Yes.

Mr. Grimes: Mr. Roth.

[fol. 554] ARTHUR T. ROTH, residing at 344 Harvard Avenue, Rockville Centre, New York, called as a witness in behalf of the defendant, being duly sworn, testified as follows;

Direct Examination.

By Mr. Grimes:

Q. Mr. Roth, you are President of the defendant bank?

A. I am.

Q. How long have you been president of that bank?

A. Approximately four years.

Q. Would you go back, please, and state your education and banking experience.

A. I graduated from the Townsend Harris High School in 1923. I attended the Walton School of Commerce, in New York City, which was a school of accountancy. I attended the American Institute of Banking, and I am a graduate of the Graduate School of Banking, American Bankers Association, Rutgers University.

Q. How old are you, Mr. Roth?

A. Forty-six.

Q. Now would you state what your banking experience has been.

A. After leaving high school I became employed with the Columbia Bank, New York City, which was absorbed by the Manufacturers Trust Company about a year later. I remained with Manufacturers Trust Company until 1934, when I took a position with the Franklin Square National Bank, as it was then known, as cashier.

Q. What year was it that you went to work for the Columbia Bank?

A. 1923.

Q. Would you state briefly, please, your experience and your positions in the Columbia Bank and later with Manufacturers Trust Company?

[fol. 555] A. Messenger, check clerk, statement bookkeeper, Boston ledger bookkeeper, general bookkeeper, collection clerk, note teller. Then I was transferred to the main office of the Manufacturers Trust Company to the Comptroller's Department where I was in charge of a number of departments in all of the branches of Manufacturers Trust Company, including note tellers, collection, general bookkeeping.

Q. Did you do special work for the bank in connection with their acquisitions of other banks, that is to say, Manufacturers Trust Company?

A Yes. Whenever there was a merger, whenever Manufacturers Trust Company took over another bank, I was assigned to one of the branches of the bank being taken over to see that their operations and systems were converted to conform with that of Manufacturers Trust Company.

Q. Mr. Roth, you have been in banking, then, from 1923 to date?

A. That is correct..

Q. During the course of your banking career have you read extensively or otherwise various treatises on banking?

A. Yes, I have.

Q. To what degree have you read them, if you could characterize the extent of your reading?

A. Well, I would say that well over half of all my reading has had to do with banking subjects. I have read various banking books and all of the leading periodicals and trade papers having to do with banking.

Q. Do you read those periodicals and trade papers currently?

A. I read them currently. I guess I read them practically every day in the week.

Q. Would it be fair to say that your reading on banking [fol. 556] subjects has been extensive?

A. Yes, that would be fair.

Q. Have you written articles for banking journals dealing with banking?

A. Yes, I have.

Q. Would you state a few, please.

A. I have written articles for the American Bankers Association publication, a trade publication called Banking, for the United States Investor, for the American Banker, and for various other periodicals.

Q. Have you on occasion been asked to and have you addressed meetings of bankers and conventions of bankers?

A. Yes, I have.

Q. Could you state a few of those occasions, please.

A. I have addressed conventions, the American Bankers Association, New York State Bankers Association, New Jersey Bankers Association, local clearing house associations, groups of bankers in Pittsburgh and a number of other places.

Q. Ohio?

A. Ohio, yes.

Q. These addresses were on banking subjects, is that right?

A. All on banking subjects.

Q. Mr. Roth, just for the record, where is the main office of the Franklin National Bank of Franklin Square located?

A. Hempstead Turnpike, Franklin Square.

Q. How far is that from the New York City line, that is, the outer limits of New York City?

A. Approximately three miles.

Q. How far is that from the heart of New York City, say, Times Square?

A. Approximately fifteen miles.

Q. How long have you been a director of the defendant bank?

A. Over ten years.

[fol. 557] Q. You testified you went there as cashier in 1934. Would you please outline briefly the progress that you have made by way of office holding since that time.

A. Cashier, vice president and cashier, executive vice president and cashier, and then president.

Q. You have read the complaint in this case?

A. Yes, I have.

Q. You have noted the charge that your bank used the words "saving" and "savings" in its signed circulars, stationery, bank forms and advertising media, which was calculated to and had the tendency and effect of leading the public to believe that the defendant bank was incorporated as a savings bank. Is that charge true or false?

Mr. Rollins: That is objected to. It is for the Court to determine from the evidence as a matter of law.

The Court: I think your question ought to be, Did you intend that situation to develop from the use. Then I think the witness could answer that.

Mr. Grimes: Very well, I will accept the Court's suggestion.

Q. Did you or your bank intend in any way to lead the public to believe that your bank was or is a savings bank?

A. No.

Q. In so far as you know, did any conduct upon the part of your bank whatsoever tend to have that effect?

Mr. Rollins: That is objected to, if the Court please. It is a matter for the Court to determine as the trier of the facts.

[fol. 558] The Court: I will have to sustain the objection, if you mean that effect on the public.

Mr. Grimes: On the public.

The Court: I will have to sustain the objection. Mr. Roth cannot tell the public mind.

Mr. Grimes: Very well, Judge. He certainly might know if it had an effect. The question is, as far as he knows did it have any such tendency or effect.

Mr. Rollins: That is objected to.

Mr. Grimes: That can arise in a number of instances.

The Court: He can give the facts and then the Court will draw the conclusion whether it did have that effect.

Q. Do you know of anyone, sir, who has at any time ever, by words or conduct or writing in any way, in so far as you know, indicated that that person or any other person thought that your bank was a savings bank?

Mr. Rollins: That is objected to, if the Court pleases. Calling for the operation of some other person's mind. The entire question is for your Honor's determination from the evidence adduced.

Mr. Grimes: The question is asked: the conduct that he has observed in any way on the part of anybody anywhere.

Mr. Rollins: He certainly could not tell that by looking at anybody.

The Court: I think I would have to sustain the objection on account of the question being so broad. I [fol. 559] think under these circumstances Mr. Roth ought to be allowed to answer, have any complaints been made to him or to the bank that they are conducting a savings bank. I think he ought to be allowed to answer that question. Then from that maybe you could develop a further line of similar questions. But when the question is as broad as to say any conversations or remarks or anything you heard at any time, I do not think that meets the issue.

Mr. Grimes: If that is the basis of the objection, I will rephrase the question in this way.

Q. Mr. Roth, have you observed any action on the part of anyone which indicated that they thought that your bank was a savings bank? That calls for observation of an action on the part of anybody.

Mr. Rollins: That is objected to, if the Court pleases. In the first place, as a matter of fact, that never could occur.

The Court: I will sustain the objection because the action would be prompted by the person's thought and then Mr. Roth would be in a position of trying to interpret what that thought was.

Mr. Grimes: If your Honor please, I am just going to make one more observation. Where fraud and deception are charged, as here, the usual rule as to self-serving declarations or other rules that ordinarily apply have no [fol. 560] application and a person is allowed by the courts, and has been for many years, the broadest right to state anything that shows the operation even of his own mind or any indication—

The Court: That is right. He has the right to show the

operation of his own mind. I have allowed that. He has a right to show, and I think he testified, that at no point did he intend—and he even speaks in his official capacity at the bank—to hold that bank out as a savings bank. He is allowed to say that because that is the operation of his own mind. These other questions which you are trying to develop all of necessity are based upon his reading the minds of other people. I do not think that that is admissible even in a fraud case.

Q. We will adopt the Judge's suggestion. Did anyone ever complain, outside of the Banking Department of the State of New York, that your bank appeared to them to be a savings bank?

Mr. Rollins: That is objected *it*, if the Court pleases, upon the ground it is irrelevant, incompetent and immaterial. That would only be——

The Court: No, I will allow that.

A. No, no one has ever complained of that. The first time I ever heard of it was when the complaint was served upon me and mention was made in the complaint itself.

Q. And was there some prior correspondence which had been introduced in evidence here?

[fol. 561] The Court: With respect to the Banking Department?

Mr. Grimes: Yes.

The Court: They have certainly taken that attitude, so I am not interested in them. You excluded them, so leave them entirely out.

Mr. Grimes: Yes.

The Court: Except Mr. Roth's answer that the first knowledge of the accusation came from the Banking Department. As far as their attitude toward it is concerned, we know that. I do not need to hear any testimony on that.

Q. Did anyone ever say to you that they thought your bank looked like a savings bank prior to the institution of this action?

A. No. Nobody has ever said that.

The Court: Let us take another angle, Mr. Roth. This is in the evidence, but just bearing on that same subject,

was it not your instructions and was it not your objective to construct a banking institution that did not look like a savings bank?

The Witness: That is exactly so. The instructions were that the building was to look more like a department store and less like a bank.

The Court: That rather covers the physical construction. Now we might ask one more question to make sure. Did you at any time, yourself, or did you instruct any of your employees or did you do anything by way of advertising or circulars to convey the impression to the public that you were there conducting a savings bank?

Mr. Rollins: That is objected to, if the Court pleases. That is a question of fact and law that your Honor will have to determine, because there are matters in evidence, admitted advertisements that they had ordered and paid for. Now, the effect of it is a question of fact, and whether he thought that that was a construction on it is not for the witness to decide but for your Honor on the evidence as the trier of the facts.

The Court: I will overrule the objection.

Mr. Rollins: And as the judge.

The Court: I have in mind the exhibits, but my question is intent on the part of the president of the bank by the use of all those exhibits which Mr. Rollins has referred to. That was in my question. Your answer was no?

The Witness: That is my answer, "No."

The Court: No instruction was ever given for that purpose.

Mr. Rollins: May I also urge that whether or not he intended on the general question as to the violation of the statute is immaterial as to his intention. There was an absolute prohibition, so his intent did not measure on that.

The Court: If he had said yes, it would have—

Mr. Rollins: Judge, whether he intended to do so or not is immaterial. The broad question here is whether he [fol. 563] violated the statute. A man is presumed to know the law.

The Court: No, on the language of your complaint.

Mr. Rollins: On one of the elements only.

The Court: That is the one we are treating.

Mr. Grimes: That is the one we are questioning about.

The Court: On the language of your complaint. I must say that the Attorney General indicated earlier in the proceeding that that part of his complaint was not the principal part of his lawsuit.

Mr. Grimes: Yes, I accept that.

Mr. Rollins: As a conclusion because of the facts and following the rationale of the opinion of *People v. Binghamton Trust Company*, your Honor.

The Court: Mr. Grimes' position is that regardless of your own attitude toward the subject, it is in the pleading and he feels he is obligated to meet it and he is trying to do it. Now, have you exhausted that question?

Mr. Rollins: May I at this time, sir, since it is germane, as I believe, point out to the Court in relation to the subject on a matter of pleading that matters of judicial notice need not be pleaded and that a complaint must be read as if the allegations had been included therein, and since the violation of the statute and the circumstances stated in accordance with the opinion of the Court of Appeals in [fol. 564] *People v. Binghamton* concluded that the effect of such violation constituted the fraud, the factual allegations thereof, although I amended the complaint, must be deemed to be incorporated in the complaint even though it had not been mentioned. But to obviate any question as to any difference in point of view of any other court on the subject, if there be a modification or a change, I did not want to take the risk and I thought that prudence dictated I include such allegation in the complaint.

The Court: Not only that, Mr. Rollins, but there is nothing that the Court has said and there is nothing that you have said in this trial which in any way eliminates that allegation from your case, because you may find that to be an element in the prosecution of this case. I made my statement because it was somewhat of a clearing of Mr. Grimes' questions on his attitude toward intent in this matter, as I understand your pleading. Now I do not want to say any more about that. I have spoken rather sketchily because I do not want to minimize the allegation. However, Mr. Grimes, have you completed those denials? You are entitled to those denials in an action of this kind.

Mr. Grimes: No, sir, I have not, because there are several other of these words used which are in the complaint, whether the Attorney General says he did not mean them, or whether—

Mr. Rollins: I did not say I did not mean them.
[fol. 565] The Court: No, he does not say he did not mean them.

Mr. Grimes: They are there, and I have several more which I would like to ask him about.

The Court: Go ahead and develop it, and if you could do it along the lines that I have indicated—do it along your own lines, but if you do it along the lines I have indicated, I think you will move along and I will admit them.

Mr. Grimes: Very well, sir. If you do not feel the form of question that I asked is proper, I wish you would ask it yourself, because what I intend to do is I think very clear.

Mr. Rollins: May I suggest that counsel ask the witness the question and that the case be tried by counsel rather than by the Court. I say that respectfully.

Mr. Grimes: I think you will find it is going to develop that way, Mr. Rollins.

Mr. Rollins: I do not think it is fair to do that in any litigation, particularly where the State is involved and the Judge is an officer of the law.

The Court: But this Court seems unable to keep out of your cases and you are very generous not to become impatient with my substituting of questions for yours from time to time, and I appreciate your attitude. I was worse at one time. I am really doing better now. However, Mr. Grimes, so that we will have a ruling and an understanding on these questions, I will say that you may ask the [fol. 566] witness any question treating with any allegation in the complaint which will elicit from him his own personal intent or the collective intent of the officers of the bank with respect to anything that they have done. But where your question seeks to elicit from this witness what the operation of mind of the public is in response to something that they have done, that I would have to exclude, with the modification that in those instances you develop the facts and then the Court draws the conclusion of what the public mind should have been when it was re-

ceiving those thrusts, whatever they may have been, in the form of advertisements, signs or by word of mouth.

Mr. Grimes: Very well, your Honor. I think I could perhaps shorten this. We have now spent twenty-five minutes on this very simple matter, in view of the objections that have been raised.

Q. Have you observed further, sir, the following charges: that your bank has practiced fraud and deception on the public, has committed a public nuisance, and has usurped the rights and franchises reserved exclusively for savings banks under New York law?

A. Yes, I have.

Q. Did you yourself ever intend to do any of those things?

A. No, I never have.

The Court: You can go further on that question. You can ask him if, aside from the intent with respect to those particular ones, Mr. Grimes, they were ever done.

[fol. 567] Mr. Rollins: That I would object to.

The Court: I will allow it.

Mr. Rollins: Because that is a matter for your Honor to determine after considering the evidence and all of the evidence.

The Court: He has not asked it yet. That is a modification of my previous general ruling and I wanted to state it now.

Q. Did you ever instruct any officer or employee of your bank to do any of those things or take any action which might result in any of those things?

Mr. Rollins: That is calling for a conclusion. All we are interested in is what he actually did authorize.

The Court: I will allow it.

Mr. Rollins: Just as a conclusion, whether it had the effect to do so. Whether he did or not is for your Honor, not for the operation of this witness's mind or for him to draw therefrom as a matter of conclusion.

The Court: I allow it. That is within the scope of the ruling that I made.

A. No.

Q. Were any of those items or things which I have enumerated ever done, as far as you know?

Mr. Rollins: That is objected to.

The Court: I will allow that.

A. No.

[fol. 568] Mr. Rollins: I want to mention that that is a matter for your Honor to decide and that is the issue before the Court today.

Mr. Grimes: I concede that this case is a matter for his Honor to decide. Perhaps that concession will clarify things. The Judge is to decide this case.

Mr. Rollins: Based upon the evidence.

Mr. Grimes: Based upon the evidence and the lack of evidence.

The Court: Go ahead. I have said that in a fraud case the witness may make these denials.

Q. Did anyone ever complain to you that any of those things were done?

Mr. Rollins: That is objected to as being incompetent, irrelevant and immaterial.

The Court: I will allow that.

A. No.

Q. Do you know of any complaint to any officer or agent or employee of the bank, the defendant bank, that is, that any of those things were ever done?

Mr. Rollins: That is objected to, if the Court please, being incompetent, irrelevant and immaterial.

The Court: I will allow it.

A. No.

Q. Now would you state how what has been testified to here as the family lobby or building No. 2 came into [fol. 569] being? Start at the beginning, sir, with your arrival in Franklin Square and the development of the business and the development of that concept.

A. Well, that goes back quite a ways, so I would rather start with the reason for our requiring additional banking space; which was that we had increased our business to the extent where we required this additional space. Of

course, it was during the war period and we could not build at that time, and so we started to plan for the type of building that we wanted to erect at the time the government would permit construction to start, and that was actually some three or four years before it really commenced. I mean, the planning started some three or four years before we actually started construction. It has always been our thinking at Franklin Square—

Mr. Rollins: If the Court pleases, I am not interested in and I do not think the Court should entertain any such evidence of what they were thinking of the construction. It is what they actually did that is the concern of the Court.

The Court: If you object to that, I think the objection is well taken.

Mr. Grimes: If your Honor please, may I say that, before you make a ruling, he may state—

The Court: I am just ruling on the last. He said, we were thinking about something, and, of course, he cannot—

Mr. Grimes: I think they may state their purpose, their [fol. 570] thinking, in view of the broad scope of these charges. I respectfully submit they may in so far as their thinking came into being in some way which is related to the issues here. Now the building begins with thought, then goes into plans, and then goes into construction. I think all phases, in view of the charge here, may be testified to by this witness.

The Court: No, I must sustain the Attorney General's objection that the witness cannot state any thinking processes that he had. His testimony started off by telling what was done.

Mr. Grimes: Very well.

Q. Did you have a purpose in mind in connection with the construction of this building, starting right from the beginning? Avoid the use of the words "our thinking," please.

Mr. Rollins: May I call to the Court's attention that this is a corporation and that corporate action is by board of directors, not by one individual, and what this man thinks and what he intends to do and what he actually did, unless

it is authorized by the corporate defendant, does not reflect the action of the defendant corporation as a corporate entity.

The Court: As I understand it, he is testifying as president of the bank.

Mr. Rollins: He is not telling about the corporate action, the directors' resolutions.

The Court: He has not gotten to that point yet. He is [fol. 571] speaking now as president of the bank in his executive capacity, and the bank is the defendant here, so I think he should be allowed to state what was done, not necessarily resolutions or what was done or any proposals that were not adopted, but those things that were done. Now, go ahead.

Q. You were at the point where you were discussing the origins of the family lobby during the war.

The Court: So you will not be misled by my statements, Mr. Roth, included in what was done are any references that you made with respect to a decision to the board of directors, and you can include in your statement, as you go along, that the board of directors also did something by way of resolution. Go right along on that.

Q. I think you may also state—I think your Honor will bear with me—what you did and what anybody instructed you to do, whether or not the board of directors was concerned in the matter.

The Court: That is right, in your capacity, as president of the bank.

A. As president of the bank.

The Court: Now go right ahead.

A. In recent years an important phase has come into commercial banking and that has had to do with the little [fol. 572] fellow, who has become one of the largest sources of income for commercial banks.

Mr. Rollins: May I ask that that statement be stricken out as not being responsive?

The Court: Motion granted.

Q. Would you state, please, Mr. Roth, the purpose for which the family lobby was designed?

A. It was designed in order to conduct business with the little fellow and, as we term it, retail banking as contrasted with wholesale banking, wholesale banking being in connection with the business account, the commercial account.

Q. Would you state how that concept was carried out in actual fact in the design and construction of the family lobby.

A. By designing it to look like a department store, with counters and display cases similar to department stores, displaying in those cases articles which we would finance if they were purchased on time, items that they should try to save in our savings accounts in order to purchase.

Q. Did the role that women play in connection with bank deposits and doing business with the bank have anything to do with the design of the family lobby?

A. Yes, because approximately 80 percent of family banking is done by women. We wanted the appearance of our family lobby to be such that women would feel at home there, rather than the cold or austere atmosphere that you usually find in commercial banks and other types of banks.

Q. Did you instruct your architects to carry your ideas, [fol. 573] the ideas which you have just expressed, into being in connection with the design and construction of the family lobby?

A. Yes, we instructed our architects to make it look like a department store.

Q. At the time or prior to the time the family lobby was built, did you decide upon and make plans for a division of your bank business?

A. Yes, a division whereby one lobby would serve the commercial accounts and the other lobby would serve the family accounts.

Q. Was that a customary division in the banking business?

A. No, I do not know of any other such division in any bank in the United States.

Q. Where did you decide to put or leave the commercial

part of the business at the time of the construction of the family lobby?

Mr. Rollins: If your Honor pleases, that is objected to as an operation of this witness's mind. It is not what he planned, it is what he did that we are concerned with.

Mr. Grimes: All right, we will accept the very helpful suggestion of the Attorney General.

Q. What did you do, if anything, about the commercial aspects of your banking business?

A. We let it remain in the lobby that formerly served all types of business, and we restricted that lobby to our commercial business and transferred to the new lobby the family banking.

Q. Did you instruct your architects to make the family lobby look like a savings bank?

A. No.

[fol. 574] Q. What were your instructions in that respect?

A. That the family lobby look like a department store.

Q. Can you express an opinion as to whether they carried your instructions out?

A. Yes. I feel that they did carry our instructions out.

Q. Now I show you one document and ask you what that document is.

A. This is an annual report of the Franklin Square National Bank.

Q. For what year?

A. For the year ending December 31, 1948.

Q. I show you another document and ask you what that is.

A. This is an annual report of the Franklin Square National Bank, for the year ending December 31, 1946.

Mr. Grimes: I offer the 1946 report in evidence.

Mr. Rollins: It is objected to. First, it is not within the issues. Our complaint is for the year 1947.

Mr. Grimes: It is offered for the purpose of showing the statements made at the time about the building and the purposes of construction.

Mr. Rollins: A self-serving declaration.

The Court: To that offer, Mr. Grimes, I must sustain the objection.

Mr. Grimes: I respectfully except.

Mr. Rollins: The 1948 report is Plaintiff's Exhibit 11; it has been offered by the plaintiff and received in evidence.

Mr. Grimes: That is in evidence?

Mr. Rollins: Plaintiff's Exhibit 11.

The Court: The 1948 report is in evidence.

[fol. 575] Mr. Grimes: I then offer so much of the report as appears on page 4 and is pencil-marked.

Mr. Rollins: It is all in evidence, sir.

The Court: This is the 1946 report, is it not?

Mr. Grimes: 1946.

The Court: Show it to Mr. Rollins.

Mr. Rollins: I made the objection to the entire thing, and that is a part of it.

The Court: Just see what that is and we will see. I will rule on the offer.

Mr. Rollins: If your Honor will look at *at* it, I object to it not only upon the ground that it is a self-serving declaration, but also on the ground——

The Court: Just object.

Mr. Rollins: Yes, sir, I object to it on the grounds it is incompetent, irrelevant and immaterial.

The Court: You do not have to give the reasons unless I ask. I must sustain the objection.

Mr. Grimes: May I have that marked for identification, please. I except.

(Marked Defendant's Exhibit FF for identification.)

Mr. Grimes: Just the page, I guess. I also ask that these be marked for identification.

(Marked Defendant's Exhibits GG, HH, and II for identification.)

[fol. 576] Q. Mr. Roth, I show you Defendant's Exhibit GG for identification and direct your attention to page 46 of that exhibit, GG being a copy of the magazine *Banking* for the year 1947, July, and ask you whether the article appearing therein was gone over and approved by the defendant bank prior to its publication?

A. Yes, it was.

Q. Is that article characteristic of publicity issued by

the bank at the approximate time of the publication of the article?

A. Yes, it is.

Mr. Grimes: I offer that in evidence.

Mr. Rollins: Objected to upon the grounds it is incompetent, irrelevant and immaterial and self-serving.

Mr. Grimes: It is offered, sir, upon the ground of a contemporaneous document bearing upon the intent ante litam motem and explaining what the purpose of the bank was at that time. I have other articles of like import which I also intend to offer, bearing upon the charges of deliberate deception, deliberate fraud in the appearance of the bank and the banking practices.

The Court: I will have to sustain the objection to the admission of this article.

Q. Mr. Roth, I ask you the same questions with reference to Defendant's Exhibits III and II for identification and ask you whether your answers would be the same.

A. Yes, they would.

Mr. Grimes: I respectfully except, your Honor, to your ruling.

[fol. 577] A. Yes, my answers would be the same.

Mr. Grimes: I offer both documents in evidence.

Mr. Rollins: Same objection.

The Court: The objection is sustained.

Mr. Grimes: I respectfully except.

Q. Mr. Roth, it has been shown here that the defendant bank was incorporated as a national bank in the year 1926; is that correct?

A. That is correct.

Q. Does the defendant bank have a branch?

A. Yes, we have three branches: at Elmont, Levittown, and Rockville Centre.

Q. Which was the first one established?

A. Elmont.

Q. What year?

A. The early part of 1950.

Q. I show you a picture and ask you whether this is a true representation of the exterior of the branch at Elmont?

A. Yes, it is.

Mr. Grimes: I offer it in evidence.

Mr. Rollins: No objection.

(Received in evidence and marked Defendant's Exhibit JJ.)

Q. What was the second bank branch that your bank established?

A. Levittown.

Q. When was that established?

A. June 1950.

Q. I show you a picture and ask you whether this is a true representation of a branch of your bank at Levittown?

A. Yes, it is.

Mr. Grimes: I offer it in evidence.

Mr. Rollins: No objection.

(Received in evidence and marked Defendant's Exhibit KK.)

[fol. 578] Q. When was the third branch established?

A. December 1950.

Q. I show you a picture and ask you whether it is a true representation of the branch. Where is that branch?

A. At Rockville Centre. Yes, it is.

Mr. Grimes: I offer that picture in evidence.

Mr. Rollins: No objection.

(Received in evidence and marked Defendant's Exhibit LL.)

Q. Now with reference to Defendant's Exhibit LL, are both portions of the two buildings there being used for banking purposes or a branch?

A. No, only the one portion which has the sign on it, "Franklin National Bank."

Q. Have any complaints ever been made to you that any of those branches look like savings banks?

A. No.

Q. As a matter of fact, referring to Defendant's Exhibit LL, was there some sort of bank there prior to its becoming a branch of your bank?

A. Yes, that was the South Shore Trust Company of Rockville Centre.

Q. That was a State bank, was it not?

A. That is correct.

Q. And about the other two branches, were there any predecessor banks there?

A. No.

Q. Mr. Roth, I show you a document and ask you to state whether the figures contained on this document are correct figures showing what they purport to show by the description thereon.

A. These are correct figures taken from the books of the Franklin National Bank showing the growth of deposits [fol. 579] and savings deposits year by year over the period from 1941 through 1951.

Mr. Rollins: Is this the same thing? This is in evidence (handing to Mr. Grimes).

Mr. Grimes: No, I don't think so.

The Court: Ask Mr. Roth that. He could answer that in a second.

Q. These figures I have just shown you are not the same as on your 1950 annual report, are they?

A. No; although our 1950 annual report shows total deposits at the end of a number of years, going back to 1934, it differs from the sheet you just showed me because that sheet is a breakdown of deposits by checking accounts and savings accounts as of the end of each year (referring to Plaintiff's Exhibit 36).

The Court: So it is different.

The Witness: It is different.

The Court: When the witness referred to "our report of"—what did you say that was?

The Witness: December 31, 1950.

The Court: —he meant Plaintiff's Exhibit 36 in evidence. All right. That is offered in evidence. The witness says it is different.

Mr. Rollins: No objection.

(Received in evidence and marked Defendant's Exhibit MM.)

The Court: Go ahead, Mr. Grimes. I will just glance at this.

[fol. 580] Q. Mr. Roth, it is a fact, is it not, that in the case of your bank, starting with 1941 and going through 1948, in each of those years your total savings deposits exceeded the total demand deposits of your bank? Is that not correct?

The Court: I wonder, Mr. Grimes, if you are not falling into an error that you sought to correct earlier in the trial? You have never identified these accounts as savings accounts. You did call them interest-bearing accounts. It does not make any difference to the Court, but I was just reminding you.

Mr. Grimes: We usually refer to them as savings accounts.

The Court: All right. Go ahead, then.

Mr. Grimes: They are also listed on that sheet as pass-book accounts and interest-bearing accounts.

The Court: I did not know whether it was just an oversight.

A. My answer is that savings deposits did exceed checking account deposits for the period mentioned, from 1941 through the year 1948.

Q. And it has only been in the last two years that the situation has reversed itself, is that correct?

A. That is correct.

Q. In other words, demand deposits have exceeded savings deposits?

A. That is correct.

Q. Now would you explain to the Court, please, based upon your experience and your knowledge as a banker, the importance of savings deposits to your bank.

A. Well, savings deposits are extremely important to [fol. 581] our bank. It is indicated by Defendant's Exhibit MM, where they constitute half of the total deposits of the bank.

Q. Now will you explain the importance in connection with the total resources of the bank and how it affects your profits and affects the community and affects industry. Will you explain those facts to the Court, please.

Mr. Rollins: May I call to the Court's attention that the statute upon which we base this action, Section 258, subdivision 1, does not prohibit any commercial bank, including a national bank, from accepting time deposits. The complaint in this action and the basis of this action is to prevent them from using the methods that they do in getting those time deposits, and therefore the question is incompetent, irrelevant and immaterial.

The Court: This is a preliminary question, evidently, and counsel has to begin somewhere. He is only beginning to develop his point in this way.

Mr. Rollins: It is axiomatic that the life blood of all banking business is funds and deposits. They cannot do business without money.

The Court: You had better let this witness give his own views with respect to these interest-bearing accounts. That is what the question was. Do you know the question, Mr. Roth?

(Last question read by reporter.)

Mr. Rollins: Objected to as it affects industry and as it [fol. 582] affects the public. He is not qualified.

The Court: Yes, as long as there is an objection there.

Mr. Grimes: Very well, I will withdraw the question and rephrase it.

The Court: Divide it.

Q. Will you please explain to the Court the importance or lack of importance of savings deposits to your bank.

A. Without time deposits and savings deposits, which constitute the bulk of time deposits, we would not be able to make mortgage loans in a national bank except to the extent of 100 per cent of the capital stock of the institution, which is small when compared to the deposits of the bank. Therefore, we would be restricted greatly in our mortgage lending, and in Nassau County the building industry has been the largest employer in the county, so that it would hamper the growth of our community—

Mr. Rollins: I move that be stricken out, " * * * it would hamper the growth of the community and the building progress in this community"—

Mr. Grimes: I consent that be stricken out.

Mr. Rollins: —“is the biggest customer.”

The Court: All right. Consented.

Q. I am going to ask you to confine your answer—perhaps I misled you a bit—to the direct effects on the bank, the extent of the business, profits, interest rates you are [fol. 583] able to pay, and in any other way.

A. Without savings deposits we could not make mortgage loans except to the extent of 100 per cent of the bank's capital. Mortgage loans are a very profitable source of income for our bank, and if we were not able to make these mortgage loans because of the lack of savings deposits, the profits of the bank would suffer.

Q. And you make loans to the building industry?

A. Yes, we do.

Q. And loans to virtually every type of industry in the community?

A. That is correct.

Q. These loans are made, in part at least, from the capital or funds, total resources, of which savings deposits are the portion indicated in that exhibit, is that correct?

A. That is correct.

The Court: Mr. Grimes, I think I excluded part of Mr. Roth's testimony before by my ruling, which was a sort of over-all ruling, but I think that I should allow Mr. Roth to testify to the effect on the community by any restriction that might be placed upon their receiving these interest-bearing accounts.

Mr. Rollins: If your Honor pleases, I think we have missed the issue here. The statute involved does not prohibit this bank, national bank, or any commercial bank from receiving time deposits.

The Court: That is right.

Mr. Rollins: It only restricts them in advertising and solicitation, so that question is incompetent, irrelevant and immaterial. There is no injunction upon any bank from receiving time deposits.

[fol. 584] The Court: That is not the angle from which I am approaching it, and I feel I ought to explain my thought because you may or may not want to pursue that question; use your own judgment. My point is this: that the Federal

Government, having authorized this bank to accept interest-bearing accounts, I must consider that the Federal Government was doing that not necessarily for the exclusive benefit of the stockholders of the community but because the Federal Government conceived the idea that this was a necessary activity that each community wherein they establish a bank needs. Therefore, I will allow the witness to testify to the effect upon the community of restricting that business which the Federal Government authorizes. As I say, you may now pursue the point or not, as you wish.

Q. Yes, I wish you would on that understanding.

Mr. Rollins: May I respectfully except to your Honor's ruling and observation of the law, because that is not a function of a national bank at all. As counsel himself pointed out, the function of a national bank is to stabilize the currency and also to act as a commercial bank. It is in the same category as all commercial banks, whether under State or Federal charter. The sole question here is whether or not the statute as a matter of law is unconstitutional, whether there is a superseding statute which [fol. 585] supersedes the State law. Now, all that is irrelevant, I respectfully submit, what effect it may have on the community. All regulation by government tends to stop certain conduct upon somebody and somebody's feet are stepped on.

The Court: I am keeping in mind, Mr. Rollins—and you do not seem to share that view—

Mr. Rollins: There are forty-six banks, Judge.

The Court: Yes. You do not seem to share that view, consequently you will not be able to follow my line of thought.

Mr. Rollins: Is it because your Honor may not give an injunction because you are afraid of the effect it may have on the community?

The Court: Oh, no. The idea is—I will explain it—that in my judgment any action by a State that interferes with the Federal Government in the exercise of one of its concurrent powers, which action interferes with the objective of the Federal Government—

Mr. Rollins: Judge, we have wasted nine days, if your Honor rules that that statute—

The Court: That affects this statute, Section 258.

Mr. Rollins: That cannot be determined by the facts in the case.

The Court: Just a moment. Section 258, as I understand the defendant's defense, is that that affects and [fol. 586] restricts this activity which the Federal Government authorizes. That is what their point is, so I will receive evidence to establish that.

Mr. Rollins: Judge, will you permit me to point out one thing. What the State statute specifies in the circumstances of this case, if there is a superseding statute, as in the First National Bank of St. Louis v. Missouri, which I say is controlling in this case, has no effect upon the decision and should have no effect on the decision. If that Federal statute says expressly or by implication, as my adversary contends, that he has the right to advertise by using the prohibitive term "saving" or "savings", then they have that right and I say Section 258 is not controlling, it has been superseded. Now, if you come to that conclusion and you say as a matter of law that is so, then we have wasted nine days in this court and that is the controlling question. That is not so, though. If your Honor rules to that effect, that throws the whole case out.

The Court: There is nothing in the Federal statute that authorizes the use of these contested words. The use of those contested words would be by implication only.

Mr. Rollins: Only in the statute. As the Court gave the definition, they said that those powers not specifically granted are deemed to be withheld, unless the attainment of the object—and I will cite the exact words—

[fol. 587] The Court: You do not have to go into this so broadly as that. I only want to say that I made a ruling and I must not mislead counsel by a ruling. I have said to counsel that I did not intend to exclude that kind of testimony which I referred to in my last statement. Now that is all that is before me and I do not wish to go into it any more broadly than that. As I say, Mr. Grimes, I thought it was due you that I explain the ruling. You may develop the point or not. There is no question before the witness now.

Mr. Grimes: I appreciate it very much, your Honor. I

would like to correct one misapprehension that the Attorney General seems to be under about what I have said. I have said that being a fiscal agent of the Government is one and only one of the purposes of a national bank. They have had many: to provide a national currency, a function they no longer provide, but one of the main and leading purposes was to provide funds from which the Government could borrow, whether by means of savings accounts or otherwise; also, to provide funds for industry, when they allowed them to become commercial banks and, in fact, set them up as commercial banks. Of course, upon that theory I think the question is proper in so far as it relates directly to the bank itself and also to the community, because one of the purposes of a national bank was to serve the community as well as the Government.

The Court: That is my view, the latter.

[fol. 588] Q. I will ask the witness to confine his answers very briefly to the point of industry and continue answering the question about the importance of savings deposits—and I am using the words of the Federal statute when I say “savings deposits”, as the bank does.

The Court: That is right.

Q. So far as these savings deposits are concerned, could you continue with your answer as to the importance as you see it.

Mr. Rollins: There is no question there.

The Court: The question is, Mr. Roth—it is just put in with the other one—with respect to savings deposits, what is the effect upon the community of the amounts you receive or a lesser amount that you would receive?

Mr. Rollins: Object to the question upon the ground that this man is not a qualified economist and that statement would be mere speculation.

Q. You will confine it, of course, to banking, that phase of economics relating to banking, will you please.

The Court: Yes, just the point of view of banking. You began to tell us about the making of loans for mortgages, and so forth. That has an effect upon the community, does it not?

The Witness: And we have a very large demand for mortgage loans, for loans to businesses, for loans to individuals, and without a sufficient volume of savings deposits together with other deposits, we would not be able to serve the demand for such loans properly.

The Court: In your community.

The Witness: In our community.

The Court: That you serve. All right.

Q. Do you use some of those funds for the purchase of Government bonds?

A. Yes, we do.

Q. In substantial quantities?

A. In substantial quantities.

Q. Can you state the approximate quantity of United States Government bonds which your bank has in its portfolio now.

A. Twenty-seven million dollars.

Q. Approximately how much of those come from savings accounts?

A. In a commercial bank in New York State we do not segregate the investment of our demand deposits and savings deposits. We invest both combined.

Q. I understand, but then would you state what the ratio is between your savings and your demand deposits now.

A. Approximately 60 per cent demand deposits and 40 per cent time deposits.

The Court: I will recess before you go into another subject, Mr. Grimes, until two o'clock.

(Recess.)

[fol. 590]

AFTERNOON SESSION

Mr. Grimes: Judge, I am just going to make one more offer. These are what the charts look like. They are readable and very clear. We prepared them, as I say, merely for the clarification of the Court, and my understanding of the rule is that documents of this sort are admissible not as proving anything in and of themselves but as representing in graphic form what has been testified to. If your Honor does not think they are helpful and does not wish to exercise his discretion, that is the end of the matter, of

course. I have a witness here who is prepared to authenticate them.

The Court: I am only guided by the Attorney General's attitude. If he objects, I must sustain the objection. If he does not, I will take them.

Mr. Rollins: Except that it clutters up the record, Judge. The record as it is is quite voluminous.

Mr. Grimes: It is already in the record, no doubt about it. I am offering them for the convenience of the Court.

The Court: But they do not need to be put in evidence to use them, you know. They are good argument. I should think you could carry them to the Court of Appeals and present them in the Court of Appeals on your argument without their being in evidence.

Mr. Grimes: Yes, I think that is quite so.
[fol. 591] The Court: I think if there is objection to their going into evidence, I will have to sustain it.

Mr. Grimes: Very well, sir.

The Court: But, as I say, I am not excluding them from—

Mr. Rollins: If there was a jury here, Judge, I would have no objection at all, because it would be very helpful for a jury to set them up here, but I do not think your Honor will need them.

Mr. Grimes: For your convenience and clarification, that is all.

Mr. Rollins: We all know that the question is not so much percentages. We know what their purpose was to serve with this poll: to show that the majority of people in the county do not have an understanding of the three terms used by commercial banks. That is the basic question, if it has any value at all. What the percentages are, to my way of thinking, as applied to the basic law is immaterial.

Mr. Grimes: Of course, we think otherwise.

Mr. Rollins: What difference does it make about the percentages, whether it is 90 per cent or 80 per cent or 30 per cent?

The Court: We have to have them have their own ideas. The only observation I could make, Mr. Grimes, is that this is not the season to have so much red in anything.

Mr. Grimes: Of course, the red here is of a very innocuous type.

The Court: By the time you get to the Court [fol. 592] of Appeals the red situation may be paled by then. I hope so.

Mr. Grimes: I fervently hope so, sir.

The Court: Let us proceed.

Mr. Rollins: I would like your Honor to read Section 10. I meant to call to your Honor's attention the Banking Law, which expresses the policy of the State of New York with reference to preventing any unlawful competition or strong competition among all banks.

The Court: I will be glad to read it, Mr. Rollins.

By Mr. Grimes:

Q. Mr. Roth, I believe we have covered the subject of the importance of savings deposits to your bank. Now would you state to the Court, please, your opinion based upon your experience as to the importance of savings deposits to other national banks, first excluding those of New York City itself?

Mr. Rollins: That is objected to, if the Court pleases, being incompetent, irrelevant and immaterial.

The Court: I think I will sustain the objection to Mr. Roth's giving an opinion about the effect on other national banks.

Mr. Grimes: Very well, sir.

Q. Then, I ask you this question: Do you know, from your experience and from your reading and from your business, [fol. 593] the ratio of savings accounts to demand accounts in other national banks in the State of New York?

A. Yes, I do.

Mr. Grimes: Now I am going to offer at this point, if your Honor please, a stipulation which contains data to which we have agreed as to the accuracy thereof.

Mr. Rollins: Took it from statistical sources, and we stipulated that those are the facts, subject to our objection to be made upon the trial that they are incompetent, irrelevant and immaterial.

The Court: Let us do it in an orderly way. Offer it in evidence.

Mr. Grimes: Yes, I offer that in evidence. It is a stipulation signed by the Attorney General.

The Court: Any objection to that going in evidence?

Mr. Rollins: I object to the facts therein stated.

The Court: But you do not object to the paper going in evidence.

Mr. Rollins: No.

The Court: But you do object to the contents.

Mr. Rollins: That is right, as being incompetent, irrelevant and immaterial.

The Court: The facts are stipulated to be facts.

Mr. Grimes: Excuse me, I think we have that "incompetent" so much. The competency is conceded. He has reserved right—

Mr. Rollins: Relevancy.

Mr. Grimes: —as to relevancy and materiality [fol. 594] to object on those grounds, and if your Honor wishes, we are both prepared to be heard on this subject. I will be very glad to state the reason why we are offering that. It is offered on the question of competition.

The Court: Just let me read your stipulation. That may tell the whole story. You have agreed upon it.

I am going to receive this in evidence. Of course, the stipulation covers the objection.

Mr. Rollins: Yes, sir.

(Received in evidence and marked Defendant's Exhibit NN.)

Q. Mr. Roth, I hand you Defendant's Exhibit NN and ask you to comment on that to the Court on the subject of competition.

The Court: What those figures mean.

A. Exhibit A in the Court's Exhibit is the tabulation of the deposits of the banks of Nassau County for the past five years.

Mr. Rollins: May the record show Exhibit A is a part of another exhibit.

Mr. Grimes: Yes. He said Exhibit A to the Court's Exhibit. The Court's Exhibit has the number designation up on top.

The Witness: NN.

Mr. Grimes: So that is Exhibit A to Defendant's Exhibit NN.

The Court: All right. Go ahead, Mr. Roth.

[fol. 595] A. (Cont'd) It shows that during the period from 1945 through 1949 the deposits in national banks, consisting of both time and demand deposits, grew from 215 million to 277 million, and the deposits of the State banks during the same period from 162 million to 182 million, and for the two combined a total of 377 million to 460 million during that period. Then the one savings bank in Nassau County had deposits of 17 million in 1945 and they were 23 million at the end of 1949. Then this exhibit is broken down to show the time deposits in the various banks and the demand deposits.

Q. Mr. Roth, since that used the phrase "time deposits," will you explain to the Court, please, the ratio between time and savings deposits and whether savings deposits form a part of time deposits in banking terminology?

A. Savings deposits are a part of time deposits. There are other types of time deposits besides savings, such as time certificates of deposits, corporations and individuals, time deposits open account, Christmas Club deposits, and escrow accounts on a time basis, and some others.

Q. What ratio do savings deposits ordinarily bear to time deposits?

A. In our bank the ratio of savings deposits to time deposits is approximately 80 per cent. It's a little higher, I believe, in our case—I know it to be so—than in the case of other commercial banks outside of the City of New York, where, generally speaking, they are about 90 per cent of time deposits. However, within the City of New York the ratio of savings deposits to time deposits is less than 50 per cent.

Q. Why is that?

A. Because within the City of New York you have a great [fol. 596] many corporation deposits that are placed on a time basis.

Q. Could those be surplus corporate funds?

A. Surplus corporate funds.

Q. When you say a time basis, could you give the Court a typical illustration of a corporate time deposit?

A. Yes. For instance, the County of Nassau has money on deposit with various banks on a time basis payable on thirty days' notice of withdrawal, upon which they receive interest.

Q. Is interest usually small for such a deposit?

A. Yes, it is.

Q. What per cent would be paid at the present time, say?

A. Approximately a half of one per cent on such deposits.

Q. Now will you go ahead, please, following that explanation.

A. This Exhibit A shows the growth of time deposits, as I mentioned, for these various types of banks for the same period from 1945 through 1949, and in national banks they increased from 98 million to 124 million, and in State commercial banks from 69 million to 76 million, and the total of both national and state banks, 167 million to 200 million. Then, in addition to that, this schedule shows the growth of demand deposits for the same period for the same types of banks, in 1945 national banks having had demand deposits of 116 million and in 1949 152 million; and in state commercial banks, from 92 million to 106 million; for the two types of commercial banks combined, from 209 million to 259 million—all of which seems to indicate that the banks in Nassau County have increased their deposits of both time and demand, as have other banks throughout the country, and that is indicative of the increase in the over-all money [fol. 597] supply in the country due primarily to the inflationary period that we passed through during that time.

Mr. Rollins: I move that be stricken out, "based primarily upon the inflationary period of that time."

The Court: All right. Leave that out.

Mr. Rollins: Because this gentleman is not an economist.

The Court: You do not need that. Strike out "based upon——"

Q. Now will you please explain to the Court your opinion based upon those figures as to the extent of competition for

time deposits between various types of banking institutions.

A. Competition for time deposits by the various types of institutions and also the individual institutions—

Q. And name the types, please, as you testify.

A. —within the types has always been very keen and very aggressive.

Q. Between what types of institutions, starting with your bank and other national banks?

A. Between national banks, between state commercial banks, between savings banks, and between savings and loan institutions.

Q. By that do you mean each type of institution with the other?

The Court: Is a national bank in competition with a savings bank?

The Witness: Yes, the national banks are in competition with the savings banks.

Mr. Rollins: May I call your attention to the Mercantile Bank of the United States Supreme Court and what they [fol. 598] there said? A national bank is not in competition with any other bank as a matter of law, as I cited in my brief. Shall I give you the citation, sir?

The Court: No. This witness would be allowed to answer this question anyway, because this refers to the accumulation of these particular deposits, not as an over-all proposition. The question was restricted to time deposits.

Mr. Rollins: I don't know how he can state that, sir, in figures, and I say he is not qualified. I move that his answer be stricken out.

The Court: No. I think I will let the witness answer. Let the answer stand that there is, he has said, competition. (To Witness:) Could you describe or characterize it by an adjective? Is it keen, intense, or mild?

The Witness: I said it was keen and aggressive.

The Court: That is right, you did. You said it always was.

Q. For the record, I wish you would state, competition between whom?

A. Between all types of banks and all individual banks in the categories that I mentioned: national banks, state

commercial banks, savings banks, and savings and loan associations.

Q. National banks with each other?

A. Yes, national banks with each other.

Q. National banks with state banks?

A. Yes, that is correct.

[fol. 599] Q. Including state savings banks?

A. That is correct.

Q. For time deposits?

A. That is correct.

Q. I don't believe you finished analyzing that Exhibit XX, have you?

The Court: He did. He got to the last column, unless he has something generally to say.

A. One portion of it is marked Exhibit A, and then we have a continuation of Exhibit A on the following page which is a summary of the assets and deposits of state institutions as of the report date nearest to January 1st of each year shown.

Mr. Rollins: May I point out to your Honor that they have meticulously omitted mention as to the time deposits outside of Nassau County, for some reason or other. They only have limited themselves to Nassau County.

The Witness: It shows the assets and deposits of savings banks for the years 1946 through 1950 and it indicates that the deposits of savings banks increased from 8 billion 200 million to 11 billion 100 million during that period, and that in the case of state commercial banks exclusive of trust companies, the deposits decreased from 457 million to 387 million, and in this case there is a decrease for the same period, and in the case of state trust companies, the deposits increased from 21 billion 700 million—and in this case there is a decrease again—to 17 billion 800 million for [fol. 600] the period mentioned. In the case of savings and loan associations the amount due to shareholders for the same period increased from 334 million to 514 million.

Mr. Rollins: Did your Honor take note of that decrease about the savings banks?

The Court: Yes.

Mr. Rollins: As the increase of the national banks, the time deposits.

The Witness: I am sorry, I did not read any decrease in the case of savings banks. There was a substantial increase.

Mr. Rollins: May I call your Honor's attention to page 2 of Exhibit A.

The Court: That decrease is under banks. Savings banks are on the left side and there is an increase. Those are "Banks" as distinguished from "Savings Banks," as I read it. Let us have the witness answer. Mr. Roth, the Attorney General drew the Court's attention to this decline in deposits in the fifth column. Can you explain that? He understood that to be savings bank deposits.

The Witness: Yes, I can explain that. That does not have reference to savings bank deposits; it has reference to deposits of state commercial banks which do not have trust powers. When they receive trust powers, then the state, in making up these statistics, includes the deposits of the state commercial banks with trust powers under "Trust Companies."

Q. So that there actually was not a decrease of savings [fol. 601] bank deposits during that period; there was an increase?

The Court: He read that, from 8 to 11.

A. There was a substantial increase from 8 billion to 11 billion dollars in that period mentioned, that's right.

Q. Have you completed the second page, that is, Exhibit A?

A. I have completed the second page, and on the third page of this exhibit there is a tabulation of the total assets of all Federal savings and loan associations in the State of New York for the years 1944 through 1949, as of December 31st, which shows an increase from 275 million to 691 million for the period stated, and also a tabulation of deposits of all national banks in the State of New York for the years 1945 through 1949, as of December 31st, which shows in the case of demand deposits a decrease from 13 million to 10 million, and in the case of—

Q. That is billion, is it not?

A. Yes, I am sorry, that is billion, correct. That is 13 billion dollars decrease to 10 billion dollars, and in the case of time deposits an increase from 1 billion 400 million to 1 billion 800 million.

Mr. Rollins: Will your Honor take judicial notice that Federal savings and loan associations are subject to Federal—to the Commissioner of Currency of the United States, and that the State has no jurisdiction or supervision thereof?

The Court: Yes, we will take judicial notice of that.

Mr. Grimes: Of course, a purported application of Section 258 allows them to use the word "savings" as well as "savings banks."

Mr. Rollins: And I submit that even if it did not affect them, it still would because that would be a superseding statute.

The Court: All right.

Mr. Grimes: I think we are agreed thoroughly on that point. The Federal statute supersedes the State.

Mr. Rollins: We have no control of United States Federal Savings and loan associations.

The Court: Let us not broaden the discussion at this time. We are just having Mr. Roth interpret these columns of figures.

Q. Having pointed out the various increases and decreases, would you again explain to the Court, please, based upon the entire Defendant's Exhibit NN and all the figures contained therein, what that shows as to competition between the various banks and financial institutions in the State of New York.

Mr. Rollins: That is objected to, if the Court please, because it is not a proper basis upon which to determine the extent or method of competition, it cannot be reflected upon mere figures, and that is a subject of the opinion of a trained economist and an experienced one.

Q. I will amend that to include, please, Mr. Roth, in the question matters included in the stipulation and out-[fol. 603] side of the stipulation, based upon your ex-

perience as an economist of that branch known as banking and your general knowledge of economics.

Mr. Rollins: If your Honor pleases, the answer sought to be given would be incompetent because the opinion of this witness is sought not only upon matters in evidence but also upon matters dehors thereof, which would be hearsay in any event, and I submit again that the theory or principle of law enunciated in *People v. Keogh*, 276 N. Y., covers this situation.

The Court: Mr. Grimes, I want to get the purport of this question. First, are you asking for opinion evidence?

Mr. Grimes: Yes, sir.

The Court: And then you are asking Mr. Roth to state in his opinion, using Defendant's Exhibit NN as a basis, what is the nature of the competition? Is that it?

Mr. Grimes: I am asking it, sir, in this form: I am asking him his opinion as an expert, based upon his knowledge and upon his own experience and the facts within his own knowledge as to the extent of competition between the various banks and financial institutions in the State of New York. He has given that based upon Exhibit A of Defendant's Exhibit NN, that is, the first page. I am now asking him the same question with respect to the entire exhibit. I should have postponed my question until [fol. 604] he was through with the exhibit, as I thought he was before.

The Court: What I have in mind is that Mr. Roth has already answered that there is an aggressive competition between and among all banks, even banks of the same type. Now you are asking, are you not, the same question again?

Mr. Grimes: Yes, to include the entire exhibit, but I will withdraw the question.

The Court: All right.

Q. Mr. Roth, will you state, based upon your experience, sir, and the facts within your own knowledge, the extent of competition between the defendant bank and savings and loan associations?

Mr. Rollins: That is objected to, if the Court pleases, being incompetent, irrelevant and immaterial.

The Court: I have to sustain the objection. That is a pure conclusion of the witness.

Q. Will you state whether your bank is in competition with—

The Court: Mr. Grimes, I wonder if this—

Mr. Grimes: I am not sure I understand the basis of your ruling, sir. Perhaps you could enlighten me.

The Court: That last question is just drawing a conclusion from Mr. Roth, what he thinks the competition between his bank and savings banks is. That is just his conclusion and, of course, I would think that is excluded. Now, could I just venture this thought on the whole subject: I consider it within the rules of evidence to ask Mr. Roth if the figures in Defendant's Exhibit NN, in his judgment, support his already given opinion that there is aggressive competition between banks. That is a matter of fact and I think he would have a right to answer that question.

Q. Would you answer the question asked by the Judge as to that as though I had asked it?

A. Yes, they indicate, as to competition between different types of banking institutions, including savings and loan, that the growth in deposits in savings banks and savings and loan institutions, both State and Federal, that that growth in those types of institutions has been greater percentage-wise than has been the growth of time deposits in national banks.

Q. Mr. Roth, is your bank subject to the rulings of the Comptroller of the Currency?

A. Yes, we are.

Q. You are subject to his jurisdiction in all respects, are you not?

A. That is correct.

Q. Have you and your bank at all times abided by his rulings?

A. Yes.

Mr. Rollins: That is objected to, if the Court please, upon the ground it is incompetent, irrelevant, and immaterial. They are citizens of the State of New York and subject to the rules and laws of the State of New York,

and no matter what the commission or the Comptroller [fol. 606] may say, if it violates the law, it is just merely advisory to them and they take the consequences if they violate it. It is not a judicial body.

The Court: Do you press that question, Mr. Grimes?

Mr. Grimes: Yes, I do, sir.

The Court: I will allow it. The question simply is, Have you obeyed all orders and directions of the Comptroller of Currency at your bank?

The Witness: Yes, we do, and if the Comptroller finds that we may be violating a State law——

Mr. Rollins: If your Honor please, may I ask the Court to have the witness refrain from volunteering any answers.

The Court: Yes, I think that is getting on a little dangerous ground there. The answer is yes. We will strike out the rest.

Q. You have understood at all times, have you not, that the Federal Reserve Act permits your bank to accept savings deposits and designates such deposits in those words?

A. That is correct.

Mr. Grimes: If your Honor please, we now offer in evidence a certified copy of an opinion in the form of a letter from the Deputy Comptroller of Currency to the Hon. John J. Bennett, Jr., Attorney General of the State of New York, dated July 10, 1939.

The Court: No objection? Mark it.

Mr. Rollins: If your Honor please, I object to the offer [fol. 607] in evidence. First of all, it is not an official document at all. It seems to me rather irregular where a department can issue a copy of a letter which purports to have been written to the present Attorney General's predecessor, and I say first of all it is not even possible of certification because the original is certainly not on file. This is hearsay, in the first place, and in the second place the opinion therein expressed is not binding upon this Court, because the statute intended to be construed, which is claimed to be a superseding statute of the Federal Reserve Act, is not ambiguous, and the decision there and the construction of the statute is a matter for judicial

interpretation by this Court, and this is an attempt to usurp this Court's functions. Before your Honor can receive the opinion or the acts of any government agent administering the agency, there must first be an ambiguity in the statute to help the Court in the construction of a statute. Your Honor must first find that. I say it is not capable of such construction unless we belabor the statute.

Mr. Grimes: May I be heard, sir?

The Court: Just let me read that.

Mr. Rollins: I submitted a brief, your Honor, on that very subject in anticipation of it.

The Court: If I want further argument, I will ask for it.

Mr. Rollins: So there will be no question about it, I will admit for the purpose of the record, to aid the Court, that [fol. 608] there was such a letter sent to the Attorney General of the State of New York—that is, the Attorney General's predecessor—the original of that offered in evidence, but that is just a matter of correspondence and the expression of an opinion, which is not controlling upon this Court. That is a construction of the statute which your Honor has to decide in this very case.

The Court: I will sustain the objection to the reception of this in evidence, but as I said with respect to the charts, that is considered opinion by an official of the United States Government and there is no reason why it could not be cited as some enlightenment on the law in question.

Mr. Grimes: Yes, we intend to do that anyway, sir. I ask this be marked for identification.

Mr. Rollins: The basis of the opinion can be cited to your Honor as a factual proposition.

(Marked Defendant's Exhibit OO for identification.)

Q. Now, Mr. Roth, I show you Defendant's Exhibit OO for identification and ask you to examine that.

The Court: If you have done it before, Mr. Roth, you can answer that you have.

A. I have.

Q. When for the first time did you see that letter from the Deputy Comptroller to the Attorney General of the [fol. 609] State of New York, about?

A. About October of 1950.

Mr. Rollins: May I make comment at this time, inasmuch as it is a lengthy record, that he certainly could not have been guided by the opinion expressed in that letter.

Q. Were there prior opinions to the same effect by the Comptroller of the Currency prior to this one?

The Court: That came to your attention.

Q. That came to your attention, yes.

A. Yes, there were some that came to my attention prior.

Q. When did the first similar opinion of the Comptroller of the Currency come to your attention?

A. About five years ago.

Q. That would be about 1945?

A. That is correct.

Q. Have you based your actions in the defendant bank upon the opinion of the Comptroller of the Currency in so far as the use of the word "savings" is concerned?

Mr. Rollins: If your Honor pleases, I object to the question on the ground it is incompetent, irrelevant and immaterial what the Comptroller of Currency or anyone else outside the State of New York thought in the enforcement of the State statutes; it is not binding upon the State of New York.

[fol. 610] The Court: That is not the purpose of the evidence. The purpose of the evidence is to negative the idea of fraud and nuisance.

Mr. Rollins: You mean on the factual element.

The Court: Fraud and nuisance.

Mr. Rollins: I wish I knew that I would be delayed all this time; I would have saved a lot of time of the Court.

The Court: Mr. Roth is being asked what was the basis of his action for using the word "savings", and his answer with respect to this part of it is that he used, not in a fraudulent way or in a way that would commit a public nuisance, but in following the views of the Comptroller of the Currency, the word "savings." That is the only purpose of that question.

Mr. Rollins: May I say that the maxim of the law that a person intends the natural objects of his act applies, and,

secondly, the act of which we complain is not excusable nor could it be estopped as against the State of New York just because someone not in authority in the State of New York told him he had the right to do so. The fact remains that he was told in 1947, admittedly so, to stop but he still challenged the State. Those letters that we have reference to and the pleadings admit the demand was made way back in 1947 for him to stop, and he says he obtained this information five years ago, but he still persists [fol. 611] in challenging it, he says as a matter of right as a Constitutional question. So, I cannot see how any fact here could be material on the questions before this Court.

The Court: I will allow the question for the purpose of showing lack of bad faith on the part of the witness and in his capacity as president of the bank in using the word "savings" contrary to the language of Section 258 of the Banking Law.

Mr. Rollins: May the record show that at least two or three of these acts, by advertisement and circular as late as 1950, show that he persisted in following that course of conduct, although the demand was made in 1947 by the Superintendent of Banks of the State of New York on that question alone, none of which has been refuted here.

The Court: All right. Let the record show that.

Mr. Grimes: I would like again to offer Defendant's Exhibit OO for identification on the question of intent only, which is all I offer it on.

The Court: Mr. Rollins, I am inclined to receive that in evidence not for its contents but for—

Mr. Rollins: Judge, I understand I am suffering under a practical difficulty. Your Honor is going to look at it and read it and possibly give it force. I realize the situation. This is not a jury trial and your Honor has recourse to look at these, and will—

[fol. 612] Mr. Grimes: We can cite it in our brief, anyway.

Mr. Rollins: —perhaps be influenced by that. I say that respectfully.

The Court: Certainly you do. I think that as long as you press that question, Mr. Grimes, I shall receive the exhibit in evidence as some proof on the part of the defendant that the defendant bank did not act in bad faith.

Mr. Rollins: May I also object to it upon the other grounds not specified, that the witness has said it only came to his knowledge in October 1950. He certainly could not have been influenced by that opinion.

The Court: He said "before."

Mr. Rollins: No, he did not say that very opinion; he said similar opinions.

The Court: With respect to this particular exhibit, the witness said, I think——

Mr. Rollins: October 1950.

The Witness: I said the first time I saw that was about October 1950.

The Court: What did you say about 19——

The Witness: I said in answer to a subsequent question that I had received and seen opinions of the Comptroller of the Currency on the same question.

The Court: Of the same tenor?

The Witness: Of the same tenor about five years ago.

Mr. Rollins: I move to strike that answer out as being hearsay and that the writing is the best evidence.

[fol. 613] The Court: Mr. Grimes, just so you will be fully conscious of the situation of the record, this letter was not seen by the witness but his testimony has been that he had seen letters similar of tenor about five years before he saw that one, which would bring it back to 1945. Now the Attorney General objects to that on the ground that——

Mr. Grimes: I withdraw the offer, your Honor.

The Court: All right. I think it will save you a little time.

Q. Mr. Roth, you are obliged to make, are you not, reports to the Comptroller of the Currency on forms provided by the Treasury Department?

A. Yes.

Q. I show you a document and ask you to state to the Court briefly what that document is.

A. This is a form which is called an earning and dividend report, which national banks are required to make to the Office of the Comptroller of the Currency twice each year.

Q. Are you required in connection with this report to state the amount of interest paid on time deposits, including "savings deposits", in those words?

A. That is correct, and those words, as stated, are printed on that report.

Mr. Grimes: I offer the report in evidence.

Mr. Rollins: That is objected to, if the Court please, being incompetent, irrelevant and immaterial.

[fol. 614] The Court: What is the purpose of that offer?

Mr. Rollins: A self-serving declaration.

Mr. Grimes: To show that we are obliged by the requirements of the Comptroller of the Currency to use the word "savings" because we are obliged to make reports on which they are printed right on their forms. We are going to show there are numerous ways in which we are required by law to use the word "savings" at this phase of the testimony. We have no choice in the matter.

Mr. Rollins: It just says the source of all revenue.

Mr. Grimes: You mean that document which you have not examined says only that?

Mr. Rollins: Whatever you label it.

Mr. Grimes: That is up to the Treasury Department, not to us.

The Court: I don't see how there can be any contention on that, Mr. Grimes. The statute itself uses the word "savings."

Mr. Grimes: Yet there is contention. That is why we are here, sir. If there were not, we would not be here.

Mr. Rollins: That is what the United States Government unfortunately labeled it. If they did not label it "savings" accounts, there would be not even room for argument.

Mr. Grimes: To say the unnecessary and the obvious, if you have the power, you may say so to the public. He [fol. 615] concedes they would not be here, so that is the exact issue.

The Court: Don't let us encumber the record by just comment at this time. You can do so much better when you put it in the form of a brief. Is this the only exhibit of this kind that you want to put in evidence, or do I understand you have many more?

Mr. Grimes: We have several more. The others relate to savings bonds, which it is our contention we are obliged to sell and to redeem and to handle, as fiscal agents of the Government. We are, therefore, obliged by the very nature of our charter and our powers and our governing body to use the word "savings" in, and in relation to, our business, both of which the State of New York says by its statute is a violation of law and we may not do and we are to be fined \$100 for each day that we do it.

Mr. Rollins: There is no such contention.

Mr. Grimes: That is what the statute says, as long as it is in our business or in relation to our business. The statute says we may not use those words. Our defense is, of course, that that statute has no application to us. That is part of our proof. There are many reasons why.

The Court: I do not read this the same way that you indicate, Mr. Grimes. This inhibition is restricted to its banking and financial business or their equivalent in [fol. 616] relation to its banking or financial business: It shall not use the word "savings." Now, I do not read from that that it is prohibited from using the word "savings" in making reports.

Mr. Grimes: Judge, may I address the Court on that subject, briefly?

The Court: Just let me think a little bit further into the application of the two. Your series of offers is to submit in evidence documentary proof that by reason of the conduct or demand of the Comptroller of the Currency that the defendant must employ the word "savings" in its reports. Is that the offer?

Mr. Grimes: Yes, sir, and that these reports are part of our banking business.

The Court: Let me see if we can obviate this instead of making a fine decision. Mr. Rollins, can you make any serious objection, in the light of the language of the Federal statute—"Continue hereafter as heretofore to receive time and savings deposits"—to the defendant showing that as a consequence of the business it has done the defendant has been compelled to account to the Federal Government under the headings wherein the word "savings" appears?

Mr. Rollins: I say it has absolutely no material bearing.

The Court: No, that is not my question. My question is: Can you have any serious objection to their putting in evidence reports wherein the defendant bank is called [fol. 617] upon to report to the Federal Government under headings and classifications wherein the word "savings" deposits—

Mr. Rollins: We still have to go to the statute. The Comptroller of the Currency is not a legislative body. No matter what he does, does not enlarge their powers.

The Court: I am just saying, do you have any serious objection to that?

Mr. Rollins: You mean as to the report? I will agree to one thing: that they did make reports. What is the use of cluttering up this record?

The Court: That is exactly what I am asking you.

Mr. Rollins: I will concede that by statutory requirement they made periodic reports.

The Court: With the word "savings," in it.

Mr. Rollins: With the word "savings" in it, that is right. I say it has no material bearing.

The Court: All right, leave out the materiality. Just that they made them.

Mr. Rollins: That is right; not under compulsion of any statute. I don't say under any compulsion of statute.

The Court: I don't think you have to say it under any particular compulsion, but then if Mr. Grimes offers in evidence these reports which are directed to the Comptroller of the Currency—is that where they go?

[fol. 618] The Witness: That is correct.

The Court: —then if Mr. Grimes offers in evidence these official forms, reports, wherein one of the classifications in each makes it necessary for the defendant bank to answer a question stating the figures with respect to savings deposits, if he offers a series of them, will you have any objection to that?

Mr. Rollins: Yes, sir, because this is another way of offering in evidence the construction of the Comptroller of the Currency as to the rights, affirmative or by implication, that your Honor excluded in the other letter offered in evidence by the Comptroller of the Currency.

The Court: No, I am not receiving in evidence the reports

on that ground. I am receiving it in this way: Here is the president of the bank commanded by Washington to make out that piece of paper.

Mr. Rollins: I say it makes no difference.

The Court: Just a moment, until you get my point. All I want the Attorney General to admit is that he had to make out that paper. Let that paper go into evidence to show what he had to make out.

Mr. Rollins: You say "had to make out" there; that is where you and I differ. I say he did not have to; he did it.

The Court: All right. Now you understand me and you cannot make that concession?

Mr. Rollins: I cannot. I did not say he had to, but I will [fol. 619] say that is the form furnished by the Comptroller of the Currency, that is as far as I will go. But I say he is not compelled by statute to do so. He is to make reports as to income and disbursements and reserves and deposits, but he is not compelled just to make a financial report as to savings banks as such, never had such power.

The Court: I will receive it in evidence.

Mr. Rollins: Exception. Does you Honor receive that document in evidence to aid your Honor in the construction of the Federal Reserve Act?

The Court: No, no.

(Received in evidence and marked Defendant's Exhibit PP.)

Q. Mr. Roth, referring to Defendant's Exhibit PP, will you now state what this is and what your requirements are with reference to it?

A. This is an earning and dividend report of the Comptroller of the Currency which we are required to fill out and forward to the Office of the Comptroller of the Currency twice each year.

Q. And among the other items you are required to state what your savings deposits are, is that correct?

A. No. We are required to report on this form the amount of interest which we have paid on time deposits, including savings deposits.

Q. The amount of interest paid on savings deposits?

The Court: The answer Mr. Grimes is soliciting is that under 2-d you are required to make an entry. Now read 2-d. [fol. 620] The Witness: 2-d reads: "Interest on time deposits (including savings deposits)."

Q. That is on the form itself?

A. Yes.

The Court: That is on the printed form.

Q. And you are required to type in or place in the answer of the amount of interest paid on your savings deposits and time deposits? Is that correct?

A. Yes, that is correct.

The Court: There is one more question, Mr. Roth. What would happen if you did not make out that report?

The Witness: We are required to make out this report and file it by a certain date. If we did not we would be violating the rules and regulations of the Office of the Comptroller of the Currency, and I don't know what would happen.

The Court: Would it be possible that under his authority—I do not know whether he has the authority or not—if you defiantly refused to send that report, could he suspend the operation of your bank?

The Witness: I wouldn't say that he could suspend the operation of the bank, but he could remove the officer in the bank who was chargeable with this duty.

The Court: All right.

Q. Now on the question of United States Savings Bonds, Mr. Roth, has your bank been asked by the Treasury Department to aid in the sale of United [fol. 621] States Savings Bonds?

A. Yes, we have.

Q. Have you done so?

A. Yes, we have.

Q. Does the Treasury Department send you advertising literature to aid in the sale of savings bonds?

A. Yes, they do, quite often, perhaps once or twice each month.

The Court: In this country, did you not?

Q. You heard an expert for the State testify as to the history of national banks among other types of banks in

A. Yes, I did.

Q. Why were the national banks—that is to say, those that operate under the present National Banking Act—established?

Mr. Rollins: That is objected to, if the Court pleases.

The Court: I will sustain the objection to that question.

Q. Can you state the duties, historic or otherwise, of national banks?

Mr. Rollins: That is objected to, if the Court pleases.

(Last question read by reporter.)

A. As they affect the Federal Government.

The Court: I sustain the objection.

Q. Is one of the duties of a national bank to act as fiscal agent of the Federal Government?

Mr. Rollins: That is objected to, if the Court pleases. [fol. 622] The Court: I have to sustain the objection to that because that is either a matter of law or it is not. I think we ought to get it from the law.

Mr. Grimes: May not the president of a corporation state what the powers and duties of a corporation are, sir? I really submit that he may.

The Court: Of the corporation?

Mr. Grimes: Yes.

The Court: Of his corporation.

Mr. Grimes: His corporation as a national bank. If the objection is that I am asking a question too broad in form, I will withdraw the question and ask you this:

Q. Do you know the powers and duties of your own bank, being president thereof?

Mr. Rollins: You mean in accordance with the charter of the bank or the law?

The Court: Under the law. I will allow that question.

Mr. Rollins: We all know what that is, Judge. It is encumbering the record. We will stay here a couple of more weeks. That is the only reason I am objecting to the question.

Mr. Grimes: We would get an answer if we did not have to wait five minutes in view of your objections here.

The Court : Go ahead.

A. My answer is yes.

Q. Would you state what the powers and duties of your bank are as regards the financing and financial [fol. 623] problems of the Government of the United States?

A. To act as a fiscal agency of the United States Government.

Q. Do you also have powers and duties with respect to the purchase of Government bonds?

A. Yes.

Q. Now I show you a document and ask you—

The Court : Just a moment, Mr. Grimes. I have to keep that straight. There was no objection to that, was there?

Mr. Rollins : I move that the answer be stricken out, if your Honor pleases. I thought your Honor was going to take all testimony about that.

The Court : No.

Mr. Rollins : That is the reason I did not object the last time.

The Court : I think you objected to the first question when Mr. Roth answered yes, and then you did not object to the next one.

Mr. Rollins : I thought your Honor was going to take all—

The Court : In view of the objection which I must consider went from one question to the next one, they being so closely related, I must strike out the witness's answer as to the powers and duties of the bank. I think that is a matter of law.

Mr. Grimes : I respectfully except.

Q. I show you a document and ask you what that document is.

A. That is an advertising poster which has been sent to us by the Treasury Department advertising the United States Savings Bonds.

[fol. 624] Q. Is that an official document of the Treasury Department, to your knowledge?

A. Yes.

Q. Have you displayed posters of that sort in your bank?

A. Yes.

Mr. Grimes: I offer it in evidence.

Mr. Rollins: I object to it, if your Honor pleases, being incompetent, irrelevant and immaterial. It only tends to encumber the record.

The Court: You offer that simply for the use of the word "savings"?

Mr. Grimes: Yes, sir.

The Court: I will take it.

(Received in evidence and marked Defendant's Exhibit QQ.)

Q. Has your bank also advertised in its own advertisements, that is, those advertisements paid for by it, the sale of United States Savings Bonds, in those words?

A. Yes, we have.

Q. You have used the word "savings" then in that connection, is that right?

A. That is correct.

Q. Is the sale of savings bonds a convenience to customers, that is, depositors in the bank, people who do business with the bank?

Mr. Rollins: That is objected to, if the Court pleases, being incompetent, irrelevant and immaterial.

The Court: Sustained.

Q. Is the sale of United States Savings Bonds among the services you offer to persons who deal with your bank?

A. Yes.

[fol. 625] Q. Have you in connection with deciding whether or not to sell United States Savings Bonds considered the factor of patriotism?

Mr. Rollins: That is objected to, if the Court pleases.

The Court: Sustain the objection.

Q. Have you or have you not considered what might happen in the way of a possible or probable decline of business in your bank if you refused to accede to the request of the Treasury Department to sell savings bonds?

Mr. Rollins: That is objected to, if the Court pleases, as incompetent, irrelevant and immaterial.

The Court: Sustained.

Q. Is your bank paid for the redemption of savings bonds?

A. Yes, we are, a fee of ten cents per bond up to a thousand bonds redeemed, and thereafter at the rate of seven cents per bond.

Q. Does your bank sell savings bonds as a part of its business?

A. Yes, we do.

Q. How long have you done that?

A. Ever since the Government has permitted banks to sell those bonds, which goes back to about 1939.

Q. Has the Government requested your bank to inaugurate payroll savings purchase plans?

A. Yes, it has.

Q. Has your bank done so?

A. Yes, we have.

Q. Has that formed a considerable part of the business of your bank?

A. No, I wouldn't say it is a considerable part of the business of the bank, but we have a fair volume of such accounts.

[fol. 626] Q. What does the payroll savings purchase plan require? I mean, that is in relation to the purchase by persons of United States Savings Bonds by deduction from their payroll, is it?

A. By deduction from their payroll, an accumulation of such funds until the employee has an amount sufficient in the account to permit him to purchase a savings bond, at which time we charge the account with the amount due on the bond and issue the bond to him.

Q. So, up to the time of purchase that becomes a deposit in your bank is that correct?

A. That is correct.

Q. I show you a document and ask you whether that is a Government form.

A. Yes it is.

Q. Is this a form supplied by the Government in connection with payroll savings purchase plans?

A. Yes, it is.

Q. In fact, is this a form which has actually been filled in and used by your bank?

A. That is correct.

Mr. Grimes: I offer it in evidence.

Mr. Rollins: That is objected to, if the Court please, being incompetent, irrelevant and immaterial.

The Court: Where do you get this form, Mr. Roth? Make it up yourselves?

The Witness: May I see that, your Honor? Mr. Green may be able to answer that. I don't know.

The Court: I would think we would have to know the source before I could receive that in evidence. I will take in evidence anything that the United States Government [fol. 627] officially uses wherein the word "savings" is used.

Mr. Grimes: Mr. Green informs me that this is an official Treasury form. Now I can swear Mr. Green as a witness if it is necessary to do so.

The Court: Do you require that, Mr. Rollins?

Mr. Rollins: I don't know, I really don't. If I knew, I would stipulate, but I don't.

The Court: The witness here does not know of his own knowledge and conscientiously he does not want to say so, but we now have it from the vice president of the bank.

Mr. Rollins: I cannot concede that it has any relevancy or materiality.

The Court: Not the relevancy. Just is it an official document?

Mr. Rollins: I don't know, Judge. I tell you frankly, myself, I don't know.

The Court: Would you stipulate that if the vice president of the bank, Mr. Green, were recalled, his testimony would be that this is an official form which he receives from the Comptroller of the Currency and is required to use in his bank in keeping the records in respect to this payroll savings plan?

Mr. Rollins: I would stipulate that he would so testify, without admitting the truth thereof, inasmuch as I have no way of contradicting it.

The Court: All right. Now do you want to offer it in evidence?

[fol. 628] Mr. Grimes: Yes, sir. Thank you.

The Court: It is received in evidence. The Attorney General has objected to it, the usual objection. I have overruled it. This is received in evidence to show that the Federal Government itself makes use of the word "savings" in its official records, with respect to the defendant bank.

(Received in evidence and marked Defendant's Exhibit RR.)

Mr. Rollins: When your Honor says the United States Government, you do not say the source, you know. Your Honor made comment that the United States Government did. I don't know whether the United States Government did or not. Some member of some agency did.

The Court: I will change that to some agency of the United States Government. We will make it the Comptroller of the Currency uses the word.

Mr. Grimes: Treasury Department also, and that is the Government, or the Government is its agencies, bureaus, et cetera.

Q. I show you four more documents and ask you whether those are official Government documents, whether from the Treasury Department, the Comptroller of the Currency, or any other agency, branch, bureau or subdivision of the United States Government, furnished you in connection with a request that you distribute those for the purpose of aiding in the sale of the United States [fol. 629] Savings Bonds.

A. Yes. We received all of these forms from the Treasury Department and they are all used in connection with the sale of United States Savings Bonds.

Q. And you have used them in that connection, is that right?

A. And we have so used them.

Mr. Grimes: I offer them in evidence.

Mr. Rollins: That is objected to, if the Court pleases. It is incompetent, irrelevant and immaterial. The objection in this complaint, may the record show, is to the method of

soliciting bank accounts for their time deposit department, and not to the distribution of any literature for the United States Government in connection with the Government's business.

The Court: I receive these in evidence for the purpose of showing that the United States Treasury Department uses the word "savings" in its literature which it sends to the defendant bank and requires the defendant bank to use in its local business.

(Received in evidence and marked Defendant's Exhibit SS.)

Q. Do you know of any way in which you or your bank could in any way perform this function for the Federal Government—that is to say, the sale of United States Savings Bonds—without using the word "savings"?

Mr. Rollins: That is objected to, if the Court please, [fol. 630] being incompetent, irrelevant and immaterial what this man knows, unless we assume he knows everything. May the record also show that there is no proof in the record here that the State of New York ever objected to such advertisement by the United States Government through this defendant or any other person.

Mr. Grimes: May the record show that the statute prohibits the use of the word "savings" in their business. He has testified these matters were in connection with their business. That is what I want the record to show.

Mr. Rollins: They are the fiscal agents of the Government, so they certainly could not be in their business and the Government's business.

The Court: The question was, do you know of any way that you could conform to this line of business and prosecute it for the benefit of the Government without using the word "savings"? Is that your question?

Mr. Grimes: Precisely.

The Court: Of course, referring to this sale of United States Savings Bonds.

Mr. Grimes: That was my question, yes.

The Court: I will allow the question. Do you know of any way?

The Witness: No, I do not know of any way that we can sell these bonds without the use of the word "savings". As a matter of fact, they are commonly referred to as savings bonds.

Mr. Rollins: Will your Honor take note of the [fol. 631] exhibit there—what is the number of that poster?—that says United States Savings Bonds as distinguished from Savings Bonds itself? "United States" in front of it.

The Court: All right.

Q. Section 258, of course, to your knowledge, permits savings and loan associations to use the word "savings," is that correct?

A. That is correct.

Q. You have testified that you were in competition with savings and loan associations; that is correct?

A. Very keenly in competition with them.

Q. Would you state the precise manner in which you were in competition with savings and loan associations in Nassau County?

Mr. Rollins: If your Honor pleases, for the purpose of the record I object to the question, upon the ground it is incompetent, irrelevant and immaterial.

The Court: What do you expect as an answer to that? You mean the word "advertising"? Would that be an answer?

Mr. Grimes: I am trying not to lead the witness. I have tried to ask him questions which he might respond to without leading. Now, I can go down, categorize each element.

The Court: If I knew what you expected in the way of an answer, I could rule.

Mr. Grimes: Yes, your Honor. I will make an offer of [fol. 632] proof at this point. I offer to prove through this witness that they are in competition with a number of savings and loan associations in Nassau County; that that competition consists of two general divisions: one, competition for people's money for deposits, and, two, competition in connection with the investments which they may make, because investments bear upon interest and interest bears upon the competition. I expect him to testify and to delineate various matters, whether by advertising or other-

wise, in which his institution is in competition of that nature with savings and loan associations in Nassau County and, to some extent, elsewhere. That is the subject matter that I wish to go into, and I can start piecemeal and lead or I can do anything, but we are moving along, I agree, very slowly. I would like to bring this to a close if we possibly could, sir, I agree with the Attorney General, and I am sure those are the Court's wishes in that respect, and I would like to get this into the record.

The Court: You have devoted so much conscientious time and effort to this that we must not do anything toward the end now, just for the sake of spending a little bit more time, preventing you from making the perfect record that you wish to make. So, although we are getting toward the end of it, we must not try to hurry; it does not pay.

Mr. Grimes: Very well, sir.

The Court: The witness has testified and it is [fol. 633] in the record here that the defendant bank is in aggressive competition with the savings and loan associations. Now, your question is, practically, How does that competition arise?

Mr. Grimes: That is correct.

The Court: Mr. Roth, now I think I will allow you to answer that question, giving your views from your own viewpoint, that is, as the president of the bank and not as to the effect upon the public. Can you make that distinction?

The Witness: Yes, I can, I believe.

The Court: If you will answer it that way, I think it is all right.

The Witness: Savings and loan associations aggressively advertise for deposits, as they call them, in newspapers, periodicals, direct mail, radio, and various other sources of advertising. They likewise aggressively seek through the same channels mortgage loans, which is in competition with our institution.

Q. Do they pay a higher interest rate, or rather a higher dividend rate, as they call it, generally, than your bank?

A. Yes, they do.

The Court: And you pay interest?

The Witness: And we pay interest on our savings deposits. They pay dividends to their shareholders.

The Court: The comparison is dividend against interest?

The Witness: Yes.

[fol. 634] Q. Are there any factors which permit them to do so, in your knowledge?

A. Yes, there are many factors which allow a savings and loan association to pay a higher interest rate than we can pay, and some of those factors are that—

Mr. Rollins: I object to what the factors are, if your Honor please, being incompetent, irrelevant and immaterial.

The Court: I think that that goes as far as the witness ought to be allowed to go. Try to concentrate on the issues we have here. I think that I will sustain the objection to the answer going any further on that particular matter.

Mr. Grimes: I understand that ruling, then, as directed to savings and loan associations on the matter of competition.

The Court: No, just this part where Mr. Roth started to say what those factors are in the savings and loan associations. I don't want to get into that because that may raise a controversy that would bring to this Court other representatives of savings and loan associations as to the factors that motivate the company, and that is not what this lawsuit is about.

Mr. Grimes: That is true, your Honor. I wanted merely the bearing upon competition and the advantages they have, and as bearing upon the higher interest rate and as bearing, in turn, upon the necessity for our not being impeded in any way in our advertising. That is the purpose of the offer.

[fol. 635] The Court: I think when the witness has testified to their manner of advertising for deposits, he has covered the competition point that bears upon this case. As to that manner of advertising for deposits, the purpose of his testimony is to show that it excludes the defendant bank from deposits that otherwise it would have if it were allowed to use the word "savings" as the loan associations are allowed to use it.

Mr. Rollins: If your Honor pleases, if that is the purpose and motive, I move that the answer be stricken out, upon

the ground it is mere speculation and there is no basis for such a conclusion or opinion that could be expressed by this witness.

The Court: No, I will let the answer stand up to that point.

Mr. Rollins: Exception.

Q. Do savings and loan associations in their advertising generally use the word "savings"?

A. Yes, they almost always use the word "savings".

Q. You understand me to mean in their advertising for people's money for investment on which they offer to pay a dividend, do you not?

A. I understood it as such.

Q. Now, do not answer this question until his Honor, the Judge, has ruled: Are they exempt from paying Federal income tax?

Mr. Rollins: I object to that, if the Court please. This man is not qualified; he is not a lawyer.

[fol. 636] The Court: I would have to sustain the objection to that. That is a question of law.

Q. Are savings and loan associations permitted to invest all of their assets in real estate mortgages?

A. Yes, they are.

Q. Are they permitted to make mortgage loans up to 80 per cent of the appraised value of properties, whereas national banks are limited to 60 per cent thereof?

A. That is correct.

Mr. Rollins: I move the answer be stricken out, because they are subject to two different regulations, one by the United States Comptroller of the Currency and the other one by the State law, and if any inference is intended to be shown that one is hampered by the other, it is as a result of the United States' strangulation by its regulation, not by the State of New York, and it has no bearing, therefore, on the case. I move that the answer be stricken out.

The Court: I will deny the motion on that ground.

Q. Are national banks required to maintain reserves with the Federal Reserve Bank?

A. Yes, they are.

Q. To what extent?

A. To the extent, in the case of our bank, of 14 per cent on demand deposits and 7 per cent on time and savings deposits.

Q. Do you receive any interest on such——

A. No, we receive no interest on those moneys.

[fol. 637] Q. Is there any similar requirement imposed upon savings and loan associations?

A. No.

Mr. Rollins: If your Honor pleases, I object to this witness's testimony.

The Court: I will sustain the objection.

Q. How many savings and loan associations are there in Nassau County?

A. Approximately fifteen.

Q. How many savings banks are there in Nassau County?

A. One.

Q. Is your bank in competition for deposits with the savings banks in New York City?

A. Yes, we are. They advertise in Nassau County.

Q. As regards competition between your bank and savings banks chartered by New York law, are savings banks required to pay any Federal income taxes?

Mr. Rollins: That is objected to as not being within the knowledge of this witness.

The Court: Sustained. It is a matter of law.

Q. To what extent are they permitted to invest in real estate mortgages?

Mr. Rollins: That is a matter of law, if your Honor pleases, and I object to it. That is all a matter of law.

The Court: Is that a matter of law?

Mr. Rollins: We have it in evidence.

Mr. Grimes: These things are also so obviously matters of fact, too, that I think this witness can testify to them, [fol. 638] in view of the fact that he is testifying as a bank president as to competition.

The Court: If it is a matter of law, I must exclude it.

Mr. Grimes: Even though it is also a matter of fact?

The Court: If it is a matter of law, it is a matter of law.

No matter whether it is a question of fact, if it is a question of law there is no use in asking the witness about it.

Mr. Grimes: I respectfully except to your Honor's ruling.

Q. Mr. Roth, is advertising essential to your business, would you say?

A. Very definitely it is essential to our business and the growth of our business.

Q. Could you state in what respects it is essential?

The Court: There do you mean to attract deposits or to attract investors?

Q. We are discussing, you understand, the attraction of deposits to your bank. In what respect is advertising essential, as you have testified, to your banking business?

A. It is essential in order to attract deposits to our institution.

Q. Mr. Roth, have you studied the problem of what terms to use in advertising in order to describe the service which your bank renders of receiving deposits for safekeeping and paying interest on them?

A. Yes, I have.

Q. For how many years would you say you have studied that problem?

A. I have in particular studied that problem since [fol. 639] I have been with the Franklin National Bank, and that goes back to 1934.

Q. Now based upon your experience in connection with your study of the problem, have you formed any conclusions as to various words to indicate that your banking institution is offering the service of accepting people's money for safekeeping and paying a return on it?

A. Yes, I have.

Q. What conclusions have you reached?

Mr. Rollins: If your Honor pleases, I object to the answer. This man is not a qualified advertising man. It would be a one-man opinion.

Mr. Grimes: That is all any expert's opinion is. We hear one man at a time, you know.

Mr. Rollins: And without any facts in evidence.

The Court: I think I will have to sustain the objection to that question.

Mr. Grimes: Sir, you will not permit him to testify as an expert on an essential part of his business, advertising?

The Court: You have asked him what conclusion he has arrived at.

Mr. Grimes: In connection with words used for advertising purposes to describe this service.

The Court: I do not think he can answer that question.

Q. Have you formed an opinion as to the usefulness of [fol. 640] the word "savings" in connection with advertising this service?

A. Yes, I have.

Q. What is that opinion?

Mr. Rollins: That is objected to, if the Court pleases. That is a phrase coined by savings banks long before commercial banks had time deposits.

The Court: I think, Mr. Grimes, that you are treading on a very important border-line part of your case right here. I can see reasons why Mr. Roth ought to be allowed to answer that question. I think he is qualified to answer it. But you are getting dangerously close to having the witness answer the question which the Court is charged with the duty of answering. If you follow along that question, if this witness says the use of the word "savings" in our advertising is absolutely essential to fulfilling the commitment for which we were organized, then you are arriving at an interference by the State with the Federal command to this bank of what kind of business it will do. As I say, I am in doubt about it. If you wish to assume the responsibility and press the question, I will allow Mr. Roth to answer. I admit this: that I will, and I think any other court that passes upon this record will, answer that question on the facts as we have them in the record.

Mr. Grimes: Your Honor, may I just say this at this point, in view of what you have said: We believe that this case could be decided as a matter of law. In view of the [fol. 641] peculiar nature of the statute, it has seemed to us all along—and we have presented our case upon this theory—that while the Court could decide this case, we might think very well, as a matter of law, there is also a question of fact involved and we have not been content to

rest solely upon a matter of law, because it might require the Court to take judicial notice of things that the Court might not wish to take judicial notice of. Hence, we have wished to prove several basic points: one, that the competition for people's money by way of deposits is very keen; two, that advertising is essential to get those deposits in a keenly competitive market; and three, that there is a difference in the effectiveness of the various words used and various terms used. That we regard as a matter of fact. When it comes to a question of proving the effectiveness of various words, we can only prove them by experts, perhaps witnesses called directly or, in the manner in which we have done, by a survey. When I ask Mr. Roth this question, I am asking him the question as an expert and as a matter of fact, and only in that sense. It is not our purpose to impinge in any way upon what is the Court's province. But, there it seem- to me, is a dichotomy here or a bifurcation here. One part is concerned with the law, but in the other part we are addressing ourselves solely to fact. Certainly, it can be a matter of fact in a competi- [fol. 642] tive field whether one word has greater pulling power than another, whether one word is almost universally understood and another set of words or terms not understood. It is only in that respect, which I regard as completely factual, that I ask the witness this question. It is not for the purpose of impinging at all upon the province of the Court.

The Court: Let me draw to your attention another angle that you may be overlooking. Expert testimony is only received where the Court or jury needs the assistance. If it does not need the assistance, a jury may entirely disregard expert testimony and decide the issue on its own knowledge and on the evidence it heard on the trial.

Mr. Grimes: Yes, I thoroughly agree with that.

The Court: Now, with respect to the Court—

Mr. Grimes: We can only offer in view of and on that point of law. That is correct.

The Court: Your difficulty here is that when you get this answer it is made before the Court, and if we have erroneously admitted that answer, the courts may be persuaded enough by that answer to jeopardize your whole

decision. As I said, I have a very clear view about what to do if you press it, but I wanted you to know the responsibility, and I say again that the facts in the case produce the answer which I think your witness is going to make. [fol. 643] All of your witnesses, all of your tables and your records have indicated the answer that you want this witness to make just categorically. Now that is just my view of it.

Mr. Grimes: Very well, sir. I shall not press it, in view of your Honor's statement.

Mr. Rollins: Then, may I make this observation, now that your Honor has given his opinion on the situation: It is not so much whether it be more convenient if you could do more business if you were permitted to use the word "savings." Assuming, but not conceding, that to be a fact, the question is, Does the denial of the use of such words tend to impair the efficiency of the national bank?

The Court: I think that is a correct statement.

Mr. Rollins: That is what it is. Just merely saying he could do a little bit more business if he was not hampered by that regulation does not give him the right to contend that the law is unconstitutional, that is the State law.

The Court: All right.

Mr. Rollins: That is the effect of all the proof they have offered, especially in the face of all the other evidence showing that national banks enjoy billions of dollars of time deposits. They must have gotten it through advertisement, because this witness himself said it is the means of obtaining that business and only through that means.

The Court: Now let us go along.

[fol. 644] Q. Mr. Roth, can you state the approximate percentage of savings deposits in your bank which come from Nassau County?

A. Yes. Approximately 98 per cent.

Q. What is the lowest amount which a person may open a saving account with in your bank?

A. One dollar.

Q. May anybody open a savings account for one dollar in your bank?

A. That is correct.

Q. As a matter of business policy, does your bank regard all of Nassau County as a potential market for it?

Mr. Rollins: That is objected to, if the Court pleases.

The Court: I will allow that.

Mr. Rollins: The other forty-six banks do.

A. Yes, we do.

Q. There are some forty-six other banks in Nassau County, too, is that correct?

A. Forty-six banks and some fifteen savings and loan associations and one savings bank.

Q. You do regard Nassau County as your market area?

A. That is correct.

Q. And you do some business outside of Nassau County, do you?

A. A small amount.

Q. Most of your banking business is in Nassau County?

A. Practically all of it is in Nassau County.

Q. Mr. Roth, we have put in evidence here—and I don't think we can put our hands on the exhibit right now—an exhibit of which this is a copy—

[fol. 645] The Court: Show him the copy. You do not have to have the original.

Mr. Grimes: May the record show that that is a copy of an exhibit which is in evidence but which we do not have at the moment, being, we believe, Defendant's Exhibit AA.

Q. Referring to what we mean to be Exhibit AA, from the standpoint of the banking and the public, in your opinion are those definitions accurate and fair?

Mr. Rollins: That is objected to, if the Court pleases. This man is not qualified.

The Court: These are the standards that the witness testified to.

Mr. Grimes: That is right.

The Court: I will sustain the objection. It is in the evidence already.

Mr. Grimes: All right.

The Court: One of these witnesses testified that those were the standards that they used in the poll.

Q. Do other commercial banks in Nassau County, to your own knowledge, permit accounts to be opened for as little as

one dollar, that is to say, passbook accounts of interest-bearing accounts?

A. To my knowledge all of them permit accounts to be opened for one dollar.

Mr. Grimes: Now may I ask this witness to comment in his expert capacity upon the results of the Hofstra poll?

The Court: I would exclude it.

[fol. 646] Mr. Grimes: No further questions.

Mr. Rollins: May I ask for a five-minute recess?

(Recess.)

Mr. Grimes: If your Honor please, I offer in evidence copies of letters dated June 5, 1947, and March 29, 1947, written in reply to—

Mr. Rollins: Plaintiff's Exhibits Nos. 15A, 15B, and 15C.

Mr. Grimes: Thank you.

Mr. Rollins: No objection.

(Received in evidence and marked Defendant's Exhibits TT and UU, respectively.)

Cross-examination.

By Mr. Rollins:

Q. Mr. Roth, you said, if I recall—if you did not say it, correct me, please—that savings accounts are included in the term "time deposits," is that correct?

A. I did say so.

Q. And that is a fact, isn't that right?

A. That is a fact.

Q. So there is no distinction between the term "savings deposits" as such and "time deposits," is there?

A. Yes, there is a distinction, in that savings deposits are a particular type of deposit.

Q. Time deposit, you mean.

A. Whereas time deposits, the term "time deposits" is an all-inclusive term which includes savings deposits, time certificates of deposit, time deposit open accounts, Christmas Club deposits, and various other types of time deposits.

[fol. 647] Q. Mr. Roth, in maintaining these time deposits, usually conducted in savings banks, passbooks are required to make a deposit and withdrawal from such accounts?

A. That is correct.

Q. Is there any difference with reference to your time deposits in your bank?

A. You mean as to the issuance of a passbook?

Q. As to a passbook.

A. No, our passbooks are quite similar, almost identical to the passbooks issued by savings banks.

Q. In other words, no depositor in your savings account department of your bank could make a deposit or withdrawal in such account? Am I correct in making such a statement?

A. No, I don't follow you on that.

Q. Could a depositor in your savings department make a deposit of moneys or withdrawals without presenting the passbook for such deposit or withdrawal?

A. The passbook is required but there are exceptions made with the approval of an officer, especially with regard to withdrawals only; but deposits may be made in both savings banks and in commercial banks without a passbook.

Q. You mean is that the exception?

A. The exception that has to be approved by an officer is when a withdrawal is made without the presentation of a passbook.

Q. How about a deposit?

A. In the case of a deposit the tellers themselves are permitted to accept deposits without the presentation of a passbook.

Q. Could that be done in a savings bank, if you know?

A. Yes, and a duplicate deposit ticket is given to the customer in lieu of the passbook.

[fol. 648] Q. When you worked for the Manufacturers Trust Company did the Manufacturers Trust Company have a time deposit department?

A. Yes, they did.

Q. And the Manufacturers Trust Company during your

time there and at the present time is still a New York State commercial bank, is that right?

A. That is correct.

Q. It is not a national bank, is that right?

A. No, it is not a national bank.

Q. What term did they use to advertise and solicit time deposits?

A. I believe they used the term "thrift accounts."

Q. Did they advertise for deposits in their time deposit department in the newspapers in the City of New York extensively by the use of the term "thrift account"?

A. I believe they advertise for such. Whether or not they advertise extensively I couldn't say at this time.

Q. Did they use the word "thrift" in their advertisements?

A. Yes, they used the word "thrift account."

Q. Did they use other media of advertisement in a solicitation of this time deposit for its time deposit department?

A. I believe that they may have used the statement envelopes—at least to state at the end of each month when they send statements to their checking accounts, they may have inserted circulars from time to time advertising the services of their thrift department.

Q. Is the Manufacturers Trust Company one of the larger banking institutions in the State of New York?

A. Yes, it is.

Q. Do you know how much their time deposits amount to, approximately?

A. As I recall, it is over 400 million.

[fol. 649] Q. That is in dollars, is that right?

A. 400 million dollars, that is right.

Q. Do you know how many depositors they have, approximately?

A. No, I do not.

Q. What is the usual average depositor in a time deposit in a commercial bank?

A. Savings bank runs around \$1,500, and in a commercial bank it might almost run as high, usually it doesn't. In our particular case it runs around \$1,000, and I wouldn't know what it is in Manufacturers Trust Company.

Q. Would that be much of a difference for the Manufacturers Trust Company?

A. No. I would say it would be substantially the same.

Q. About \$1,000 average for each account?

A. Approximately.

Q. The Manufacturers Trust Company, by that calculation, enjoys about 400,000 depositors for their time deposit or, to use another term, saving deposit department; is that right?

A. On the basis of your calculation, that is right.

Q. You would not say that that is by the use of the term "thrift account," would you?

A. That is by the use of the term "thrift account."

Q. That is your answer? That is, the answer is yes?

A. In advertising, yes, and in the circulars that I mentioned, yes, but it was quite different when we solicited these accounts in many of the new business campaigns and spoke to those people who came to the bank in order to open time accounts which would bear interest. Our explanation then was a little different than the use of thrift accounts.

Q. In the Manufacturers Trust Company, in their time deposit department they had these cages where they re-[fol. 650] ceived these deposits and where withdrawals were made, isn't that correct?

A. Yes, that is correct.

Q. Did they have that particular department labeled over the cage?

A. I believe in many of the branches they had the words "Thrift Department" over the cages.

Q. They did not have the word "savings," did they?

A. No, they did not display the name "savings" anywhere in the bank.

Q. Do you know what the time-deposit amount in the National City Bank is?

A. It is a little more than Manufacturers Trust, as I recall, perhaps 10 or 15 per cent higher.

Mr. Grimes: May I say, when the witness answers a question about the time deposit, he means the interest-bearing passbook accounts, because he has testified there is a difference.

Q. You understand by my question I mean passbook accounts, do you not?

A. Yes, I do understand that, but we are talking of the term "time deposits" and, as I mentioned before, in New York City banks they have a higher percentage of non-saving deposits included under the term "time deposits" than do the banks outside of the City of New York.

Q. In the National City Bank, when you say about 15 per cent higher than the Manufacturers Trust Company, you would say it would be over 500 million dollars, isn't that correct?

A. It isn't over 500 million, as I recall it, but it is between 400 and 500.

Q. Million dollars?

A. Million dollars.

[fol. 651] Q. And based upon the calculation, that would represent between 400,000 and 500,000 depositors, is that right?

A. That is correct.

Q. What term do they use in advertising and soliciting accounts?

A. In advertising accounts they use the written word "special interest," but when you ask me soliciting accounts, their solicitors tell people, "This is the same as a savings account, this is a savings account."

Q. That is just merely what someone had told you, isn't that correct?

A. I used it myself when I was with Manufacturers Trust Company and was called upon to explain to people why it was called a thrift account when people came to the bank to open a savings account.

Q. Do any commercial banks, to your knowledge, use the radio or television?

A. Yes, many of them use it at the present time.

Q. A national bank, as you understand, is included in the general heading of commercial banks?

A. Yes, it is a commercial bank.

Q. When you used the term "competing," did you mean to convey the thought that you sought deposits for your savings department? Is that what you meant by the word "competition" with other banks?

A. I meant that there were individuals who had money available to deposit on a time basis and we competed with other individuals, with other institutions for that person's money.

Q. And that is the extent to which you used the word "competing"?

A. When we talk of savings deposits.

Q. That is what I mean, savings deposits. Did you intend to convey that you tried to take customers away from [fol. 652] other banks?

A. Oh, yes, very definitely.

Q. By the word "competing"?

A. That is part of it also.

Q. Commercial banks as a rule in the last five years have paid interest, other than your own bank, at the rate of 1 per cent per annum on their time deposits, I mean passbook accounts?

A. Well, they have paid various rates on their savings deposits. I believe the 1 per cent rate is about the average rate.

Q. Your bank is the one that pays 2 per cent, is that right?

A. We pay 2 per cent from day of deposit.

Q. Do you know what rate the National City Bank is paying?

A. One and a half per cent.

Q. Do you know what rate the Manufacturers Trust Company is paying?

A. One per cent.

Q. Do you know what rate savings bank deposits?

A. Savings banks pay?

Q. Interest, yes.

A. Yes, 2 per cent.

Q. From your experience as a banker it is natural, is it not, for a person who seeks to invest his money by way of deposit in some time deposit account to be anxious to get as much interest as possible, isn't that right?

A. Yes, that is correct.

Q. And that, of course, if consistent, you will agree, with safety for their investment?

A. That is correct.

Q. Naturally, the reputation of the bankers measure in a great way for a depositor to use that particular bank, isn't that right?

The Court: Mr. Rollins, you say—Excuse me. Read the question.

(Last question read by reporter.)

[fol. 653] Q. In other words, a person who is seeking to make a deposit of money on interest not only looks for as much interest as he can but also is concerned about the reputation and integrity of the persons behind the banking institution, isn't that right?

A. Yes, that is an important element also.

The Court: Mr. Rollins, my interruption was to find out how much longer you think you will be with Mr. Roth.

Mr. Rollins: Very shortly, sir. I do not see how I can say much more. Most of the facts testified by this witness—

The Court: What do you mean—much longer?

Mr. Rollins: I hate to make a prediction.

The Court: No, I do not want you to. I just have to make arrangements with my staff.

Mr. Rollins: I do not think I will take a half hour, if that much.

(Recess.)

Q. How many passbook depositors has the defendant?

A. About 30,000.

Q. I show you Defendant's Exhibit NN, calling your particular attention to Exhibit A, the first page thereof, and I ask you to note the time deposits in commercial banks in Nassau County for the period mentioned therein between 1945 and 1949, and ask you to specifically note the figures of \$167,694,000 for the year 1945, the sum of \$187,534,000 for the year 1946, and the sum of \$192,853,000 for the year 1947, and the sum of \$196,738,000 for the year [fol. 654] 1948, and the sum of \$209,950,000 for the year 1949. About how many depositors would you say represented these time deposits?

The Court: Each year, do you mean?

Q. Each year.

A. Well, on an average of \$1,200 per account, or to make it more simple, \$1,000 per account, you have—

The Court: He can compute that. On a unit of \$1,000 per account.

Q. For the year 1949, let us take the figure of \$209,950,000. About how many depositors would you say on time deposits by book account would that represent?

A. Once again, we are a little bit confused because we are talking about time deposits, and I mentioned before—

Q. What you call savings—

A. You see, we have to take out of these time deposits those deposits which are not savings deposits.

Q. How much would you estimate represented time deposit accounts out of the 200-odd million for the year 1949 by passbook accounts, outside of this corporate business?

A. In Nassau County it might run about 75 per cent of the 200 million dollars would be savings accounts.

Q. About how many would you say deposit?

A. And that would be 150 million.

Q. How much would it be in depositors?

A. Well, \$1,200 an account; it might be 125,000 accounts.

Q. And that is all for Nassau County?

A. And that is Nassau County exclusive of the savings and loans and the savings bank.

[fol. 655] Q. That is for all commercial banks?

A. That is correct.

Q. And that is inclusive of national banks?

A. And that is inclusive of national banks.

Q. Commercial banks of the State of New York are on the same par with national banks, as far as you know, isn't that correct, with respect to restriction and regulation—Question withdrawn.

Q. All enterprise properly run for profit requires advertising, more or less, isn't that correct?

A. That is correct.

Q. It is the accepted method of marketing commodities, isn't that right?

A. That is correct.

Q. And banking is no exception?

A. Correct.

Q. Sale of security the same thing, isn't that right?

A. That is correct.

Q. You won't challenge my statement if I said that the public could be educated to understand what trade terms represent, would you, such as Four Roses, meaning rye liquor, would you?

A. If you spend enough money on that advertising.

Q. Assuming that you spend enough money.

A. I think if you spend sufficient money, yes.

Q. That could be done also by handbills, isn't that right?

A. Oh, no, I wouldn't say by handbills. I would say in order to make the public fully cognizant of learning a new trade term and a difficult one, you would have to use all forms of advertising so that you would reach all people.

Q. Assuming that is done, the public could, as an intelligent public, understand that the term Four Roses, assuming that it is properly advertised to the full limit, represents liquor; the public could be made to learn that, isn't that right?

A. That is possible.

[fol. 656] Q. And that has been done with that particular commodity today, isn't that right? It is generally understood to mean that Four Roses is liquor, isn't that right?

A. I think so.

Q. The same thing obtains with the advertisement by use of the term LS/MFT, isn't that right, meaning Lucky Strike cigarettes?

A. That is right.

Q. And that has become universally known to represent Lucky Strike Cigarettes, isn't that right?

A. That is right.

Q. By the slogan in advertising, "Be Happy—Go Lucky", the term suggests to the public mind Lucky Strike cigarettes, does it not?

A. That is right.

Q. There are a lot of other commodities which have been similarly advertised?

A. That is right.

Q. So that even though the trade name does not suggest

the product, the public has begun to learn that it means a definite commodity, isn't that right?

A. That is right.

Q. The same thing could be done with the term "thrift", could it not, under the same conditions and circumstances?

A. No, I don't think you could exactly do it with thrift.

Q. Why?

A. Because when you advertise LS/MFT, for instance, you always refer to cigarettes, you talk about cigarettes; but when you want us to advertise a word "thrift" and get the public to generally know——

Q. I am talking about thrift account.

A. ——that thrift account is a savings account, you must always say this is a savings account, and you are prohibited from using the word "savings" under your interpretation.

[fol. 657] Q. Let us see if that is so or not. Savings banks existed long before commercial banks accepted deposits, is that not right?

A. That is right.

Q. That is of similar deposits?

A. Yes.

Q. How much longer?

A. You mean——

Q. In point of time.

A. ——have they been permitted to take savings deposits as such than savings banks?

Q. That is right, how much longer?

A. Of course, national banks have always accepted time deposits and they have always accepted certificates and savings accounts, but the law was never clear on the fact that they could use the word "savings".

Q. The regulation of savings banks with reference to the subject matter of this litigation was enacted in 1872—I am referring specifically to Section 258 of the Banking Law—is that right?

A. Yes.

Q. Prior to that particular time, savings banks existed as such, did they not?

A. That is right.

Q. And commercial banks at that time did not in any great degree receive passbook accounts, did they?

A. Well, they accepted time deposits, they accepted the savings of people.

Q. Not on the passbook basis, did they?

A. No, but—yes and no. Some on a passbook basis and others on what was called a certificate basis.

Q. But it was not to the same degree as it is in recent date, from the beginning of 1920?

A. No, not since the clarification of the powers of a national bank in 1926 or some such date.

Q. So, from early date people had begun to know that savings banks were such by the use of the word “savings” [fol. 658] bank or advertisement using the word “saving” or “savings”?

A. Well, you are trying to imply that savings banks coined the word “savings” and they were the ones—

Q. But they used it in their advertising, isn't that right?

A. Yes. Of course, Benjamin Franklin always used to refer to the word “save” very much long before the time of savings banks.

Q. But at the time of savings banks, in their history and antedating the commercial banks' time deposits by passbook, as we now know, savings banks had been engaged in accepting savings accounts, had they not, by advertising the term “savings” or “saving”?

A. Yes, that is right.

Q. Would you say that your bank during the last five years was enjoying good business?

A. Yes, I would say that.

Q. I call your attention to Plaintiff's Exhibit No. 36 showing the record of growth of the defendant and ask you whether or not the record of growth therein stated is true.

A. Yes, it is.

The Court: He will answer yes to that.

Mr. Rollins: All right. This is a printed form. I just wanted to make sure. I asked the vice president, but he is the president.

The Court: All right.

Q. As of December 31, 1933, the defendant had an undivided surplus of \$123,437.08, is that correct?

A. Capital surplus—

The Court: Mr. Rollins, those being in evidence, what is the use of asking the witness all over again?

[fol. 659] Mr. Rollins: I am frank to say I just wanted to call your Honor's attention to it.

Q. As of December 31, 1950, the capital surplus of undivided profits is \$5,022,898.49?

A. That is correct.

Q. And that is a pretty good record of accomplishment, is it not?

A. You cannot—

Q. Yes or no.

A. I don't want you to feel that all that is through earnings, because a great deal of it came through the sale of new stock and also through the acquisition of South Shore Trust Company and their capital of \$1,600,000.

Q. When you use the word "surplus", does that not mean over and above capitalization?

A. Yes, over and above capital stock.

Q. Take December 31, 1949, where the undivided surplus therein reported is \$2,845,385.74.

A. Yes.

Q. What part of it represented earnings other than the sale of stock?

A. Well, on that same report that you refer to we have a report of all of our income and expenses for the year 1949, and it indicates that our net earnings before taxes were \$851,000, our reserve for taxes was \$270,000, leaving net earnings after taxes of \$581,000.

Q. On a capital of what?

A. On a capital of \$2,845,000.

Q. Do you consider that a good business accomplishment?

A. Well, our earnings are one of the best in the State of New York and one of the best in the country, yes.

Q. That is in comparison with all other banks in Nassau County?

A. That is correct.

[fol. 660] Q. This exhibit that the family lobby has from

time to time for the inspection of customers and others, as you told us, is kept in the rear of the family lobby, isn't that correct?

A. No, that is not correct, because it is in the front windows, it is in the middle of the bank, and it is towards the rear. It doesn't go back any further, as a matter of fact, than three-quarters of the length of the family lobby from the front.

Q. Are there any shelves there in the front?

A. No, we have no shelves.

Q. When you walk into the lobby in building No. 2, as designated on Plaintiff's Exhibit No. 18—did you see that picture that I refer to as Plaintiff's Exhibit 18?

A. Yes.

Q. Are there any exhibits in that lobby?

A. We have exhibits in that lobby all the time.

Q. I am not talking about the rear; in the front as you walk in from the door. I will show you the pictures.

The Court: He can understand it.

A. It is possible that on the particular date that the picture was taken there were no exhibits there, just as you will find in a department store that there may not be any exhibits in the window in a department store because they are in the process of changing them.

The Court: The question really is: Do you have space for exhibits?

The Witness: Yes, we do.

The Court: And is it your practice to put exhibits there? [fol. 661] The Witness: And they are there almost all the time.

Q. You remember I was there September 18, 1950, at the bank where I examined you?

A. That's right.

Q. Will you swear that there were any exhibits in the window on that day in the lobby, that is, in the window in building No. 2 or the family lobby, as you call it?

A. The photographs which you have on exhibit would indicate that, because I believe you took a picture of those front windows, and it may be—

The Court: You would not know any particular date, would you?

The Witness: Yes, he is asking a particular date.

The Court: I say you would not know on any particular date.

The Witness: No, I wouldn't.

The Court: Whether there were exhibits in the windows. He has made the statement that as a general proposition and practice they are there.

Q. You would not say that the so-called exhibit of commodities was placed on the floor in the lobby leading from the street to the savings department, would you, with any regularity, I mean?

A. The lobby from the street to the savings department?

Q. That is right, to the front of the building.

A. The area from the entrance to the savings department is all lobby and it is only that portion of [fol. 662] the bank that is within about five feet of the front windows of the bank that are used for exhibit purposes.

Q. That is to attract people to it, isn't that right?

A. That is in the front windows of the bank, that's right.

Q. That is, a means of attracting would-be customers to create interest, isn't that right?

A. That is our reason or one of the main reasons for the exhibits.

Q. The only reason you say this place looks like or is intended to be a department store is that it has windows for display purposes, the front of it?

A. No, that is not correct. The windows are perhaps the least.

Q. Are there any shelves inside?

A. We have department store counters inside.

Q. I am going to ask you to show me, looking at these various photographs, where those counters are in the building on—what is that, Hempstead Turnpike?

A. That is right.

The Court: There was an exhibit here just a little while ago that shows this. Maybe you and the witness can come to an understanding as to what you mean by counters. You

do not deny that there were counters in the lobby, do you?

Mr. Rollins: What counters? Where the customers write, naturally.

Q. When I mentioned counters, I meant display counters like you find in department stores.

A. I know what you have reference to.

Q. You know what I meant. I will let you look at Plaintiff's Exhibit 28. That is a picture of the front [fol. 663] part of the family lobby, is it not?

A. Yes, it is.

Q. Are there any display counters there?

A. No, there are no display counters shown in here, but as I mentioned before, most of the time we have displays in this front section of the window.

The Court: And you use counters when necessary?

The Witness: Oh, and we have counters on the floor with displays in them all the time, and some of these pictures should show those counters.

Q. I show you Plaintiff's Exhibit No. 26 and ask you if you see any display counters there.

A. Yes, I see display counters there.

Q. Where are they?

A. I see one display counter right there, and I see part of a display counter here (indicating). You see the glass in the front, the glass on the top.

The Court: He points to these (indicating). Is that what you mean by display counters? Are you and he talking about the same thing?

Q. You mean when you say display counters that it has advertisement in front, is that right?

A. It has advertising in them and it also has products in them. Some of the services the bank sells—

Q. You mean in that picture, Plaintiff's Exhibit No. 26?

A. In this picture all that you see here are two large posters in the display counters, but usually at least three- [fol. 664] quarters of our display counters have products in them, and this only shows, as I mentioned, two of the counters of the perhaps twelve or fourteen display cases that we have in the bank.

The Court: Let us agree on this, anyhow.

Mr. Rollins: Judge, I do not think we ought to pursue it, inasmuch as your Honor said he was going to go down to the store itself.

The Court: That is right.

Mr. Rollins: Your Honor will understand what I mean.

Q. Did you intend to convey to this Court that when you built lobby No. 2 you did not want it to look like a bank although you were going to use it for banking purposes?

A. Most definitely, and those were the instructions given to the architect, and for years before that whenever I went with my wife shopping in department stores she used to get annoyed that I would gaze at the counters and the method of displaying goods, and I was thinking about banking instead of what she wanted to buy.

Q. If you looked at just merely Plaintiff's Exhibit No. 3, would you say that what you see there looks like a department store or a bank?

A. This particular counter in the front of the picture is a department store display counter that we use for——

Q. Does that look like a bank or does it look like a department store?

A. Well, it's hard to tell from just a small portion of the banking floor what it looks like. I know what it is.

[fol. 665] Q. You mean if a person would walk into, let us say, that portion of the premises shown on Plaintiff's Exhibit 26 he would believe he was in a department store, or would he feel that he is in a bank?

A. Well, I have stood outside the window of the bank on many occasions——

Q. I am talking about——

A. I am answering you.

Q. ——right there, looking at Exhibit 26.

The Court: Put it in the form of the impersonal. You said if a person walked in. Now he is trying to put himself in the place of that company.

Mr. Rollins: All right, let him answer the best way he can.

The Court: Yes, that is the way to answer it.

A. I have stood on the sidewalk outside of the bank on many occasions and I have seen people looking in the

window and I have heard them say, "This isn't a bank, is it? This is a department store. What are they selling here? Do they sell merchandise or what?"

Q. They never form a different opinion by anything they see in there; is that what you try to convey to this Court?

A. I don't mean to say that at all. People have generally got to know that it is a bank now.

The Court: I do not think you ought to pursue that subject. I think you have the record fully covered on that aspect. It is only a matter of discussion.

[fol. 666] Q. In the year 1948 were you instrumental in preparing this annual report of the defendant bank?

A. Yes, I was.

Q. I am referring now to Plaintiff's Exhibit No. 11.

A. I was.

Q. Did you read the contents of Plaintiff's Exhibit 11 before distributing it to the public?

A. I did.

Q. I call your attention particularly to page 11 of Plaintiff's Exhibit No. 11, under the heading of "Savings," wherein it was noted: "We had 12,096 thrift accounts at the end of 1944 totaling \$7,423,000. These figures this past year end were 19,561 accounts and \$13,961,000." Do you notice that statement therein?

A. Yes.

Q. When you mentioned the word "thrift accounts" therein what did you have reference to?

A. I had reference to savings accounts, but the Banking Department had been bothering us on many occasions about the use of the word "savings" and on occasion we changed it to thrift.

Q. That was in the year 1948, is that right?

A. Yes, I remember that year in particular.

Q. At that time you had 19,561 accounts, is that right?

A. That is correct.

Q. As stated there. That is these so-called thrift accounts, is that right?

A. In other words, savings accounts.

Q. That is passbook accounts?

A. That is correct.

The Court: You are in agreement on that.

Mr. Rollins: The only reason I mention the figures is keeping in mind all the time the so-called statement by the [fol. 667] pollsters that people generally did not know what it meant.

The Court: All right.

Mr. Rollins: No further questions.

Re-direct examination.

By Mr. Grimes:

Q. As of the time you spoke of time deposits in the National City Bank, what were their demand deposits?

A. Well, the total resources in the National City Bank are slightly over five billion dollars, and that would mean that their demand deposits therefore should be over four billion dollars.

Q. The ratio would be approximately ten to one, like other New York City banks, is that correct?

A. That is correct.

Q. Would you state what the figures would be by ratio or otherwise for Manufacturers Trust Company as of the time you spoke?

A. I would say it is approximately the same ratio of ten to one.

Q. When you gave figures for time deposits, were you including—or, rather, let me put it this way: When you gave figures for National City Bank and Manufacturers Trust Company for time deposits, were those figures for time deposits in the true sense of the term “time deposits”?

A. You mean when I gave figures as to the average account in those two banks. As I recall it now, we divided the 400 million dollars figure by approximately \$1,000 per account.

Q. And arrived at 400—

A. And arrived at 400,000. We should not have done that because a high percentage of those 400 million dollars [fol. 668] worth of deposits constituted deposits other than passbook accounts.

Q. Have you any notion as to what the passbook accounts of Manufacturers Trust Company were?

A. No, I do not know that.

Q. Or of National City?

A. No, I do not know that.

Q. In other words, you do not have a breakdown?

A. I don't have a breakdown on that.

Q. Do you know whether the time deposits, excluding passbook accounts, are generally larger in New York City banks than passbook accounts deposits?

A. Yes, generally they are larger.

Q. You testified that savings banks pay 2 per cent interest?

A. Yes.

Q. How long have they been doing so?

A. They have been doing so for about two years.

Q. Will you state, please, for the past two years what national banks have generally paid on their savings deposits?

A. Approximately 1 per cent.

Q. What has the defendant bank paid on savings deposits in the past two years?

A. We changed our rate to 2 per cent on the 1st of January of this year. Prior to that time and for a period of four years or so we were paying 2 per cent on the first \$1,000 of deposit, excluding the first \$100, and 1½ per cent on all deposits over \$1,000.

Q. Other banks, you testified, are now paying about 1½ per cent. Is that increase in the amount paid recent?

A. Generally, commercial banks are increasing their rates on savings deposits. I can't say that the average rate has now gotten up to 1½ per cent, but there are a number of banks paying 1½.

[fol. 669] Q. Is it your opinion that such increases as there have been have been caused by competition?

A. Yes, that is one of the main reasons for the increases: competition.

Q. Is that competition with savings banks or with savings and loan associations, or with both?

A. With both institutions, and in Nassau County particularly with savings and loan institutions.

Q. Now I show you Defendant's Exhibits Nos. X and W for identification and ask if you know what those are.

A. Yes, I do.

Q. Do you know those to be official documents?

A. Yes, I do.

Mr. Grimes: I am going to offer those in evidence, your Honor.

Mr. Rollins: That is objected to. May I call your Honor's attention to Section 344-a of the Civil Practice Act: If there is a rule and regulation of a Federal agency——

The Court: Wait a minute. I am sustaining the objection. You don't have to say anything.

Mr. Grimes: You have sustained it, sir?

The Court: Yes.

Mr. Grimes: We ask the Court to take judicial notice of those rules and regulations under Section 344-a. Would you like to have them for your convenience?

The Court: I would think that if they are properly promulgated rules and regulations of which I am to take judicial notice, you can use them in this case with your memorandum.

[fol. 670] Mr. Rollins: May I say to your Honor that I do not think these offered regulations have been filed with the Federal Register as is required under the State law.

The Court: Wait. You don't have to say that. That is the reason I am sustaining the objection. I will say this much: We will leave it this way, and I know you will cooperate to this extent: With an objection as to their competency, I cannot receive them in evidence, but after today if you are able to make them competent by talking to Mr. Rollins and getting any other proof that you want, you can still put them in evidence.

Mr. Grimes: Thank you, sir.

The Court: It is only a matter of form. But with the objection I must exclude them.

Mr. Rollins: Will counsel say that they are in the Federal Register?

The Court: Suppose you discuss that later.

Mr. Rollins: I spoke to Mr. Friedman the other day and gave him the Court of Appeals case.

The Court: No, I don't say that. I say when you leave here today talk about those over the telephone and if you come to an understanding, send them out here and I will make them part of the record.

Q. Have you relied upon the use of the words and definitions of savings deposits in Defendant's Exhibits X and W for identification in using the words "savings" in connection with the operation of your bank?

[fol. 671] Mr. Rollins: That is objected to, if the Court please. An opinion must be based upon matters in evidence.

The Court: The word "rely" is stronger than it should be. The question may be asked, Did you ever see those and did you read therein the word "savings" used in connection with the bank?

Mr. Grimes: Very well, I ask that question.

The Witness: Yes.

Mr. Rollins: I move the answer be stricken out.

The Court: No, I will allow him to say that.

Mr. Rollins: Your honor denies my motion, sir?

The Court: Yes, I deny the motion to strike out.

Mr. Rollins: Exception. Because in reading from something not in evidence——

The Court: Counsel is not reading.

Mr. Rollins: Relying upon something not in evidence.

The Court: The witness saw it, that is all. All right, I do not think that is too important.

Mr. Grimes: The defense rests.

(Witness excused.)

The Court: Both sides rest.

Mr. Grimes: We now renew the motion previously made and move for judgment.

The Court: You make the same motion, Mr. Rollins?

Mr. Rollins: No. I move now, for the purpose of the record, to strike from the record——

The Court: Wait. I do not want to take those motions at this time. I will take the motion moving for judgment. I would like you to take plenty of time.

[fol. 672] Mr. Rollins: Judge, I will have to have it on the record.

The Court: That will be on the record. I shall have it added to the record. You have tried a long case, a complicated case, a difficult case, and I want you to have the fullest opportunity to present your motions, and I will say the same to both sides. If you want to make your motions in

writing, send them to me and I will add them to the record. I shall reserve decision on all motions.

Mr. Grimes: We have made ours, sir.

The Court: All right. But Mr. Rollins has a little more difficult motion to make than just motion for judgment. So, send me and send Mr. Grimes a copy of your motion, in letter form, if you wish, and it will be added to the record just as if you made it today.

Now, gentlemen, is there any desire upon your part to submit anything further to the Court, or have you submitted everything you want to submit by way of memorandum?

Mr. Grimes: I think that is largely at your Honor's pleasure. I take it you do not care to hear argument?

The Court: Not at this time. If I do, I shall notify both counsel. Suppose I say that you may have all next week to submit a brief to the Court, if you so desire, in addition to what has already been submitted.

Mr. Grimes: If your Honor would care to have any points briefed, we would be very happy to do so.

The Court: No, I don't care to. You do not need to exchange those briefs. Those are trial memoranda. Just submit them, that is all.

[fol. 673] Mr. Grimes: If you wish to have submission of oral argument, we would be very happy to do so.

The Court: If I find I would like oral argument, I shall be willing to impose upon you and ask that you come out and give me the benefit of your enlightenment.

Gentlemen, I would like to compliment you on presenting a very difficult case and an important case.

Mr. Grimes: Thank you. I wish to thank the Court for the great patience that has been shown to both sides.

Mr. Rollins: Those are my sentiments, too.

IN SUPREME COURT OF THE STATE OF NEW YORK, NASSAU
COUNTY

MOTION BY PLAINTIFF TO STRIKE OUT EVIDENCE AND FOR
JUDGMENT IN FAVOR OF PLAINTIFF—February 15, 1951

Re: The People of the State of
New York v. The Franklin
National Bank of Franklin Square.

Hon. Thomas J. Cuff,
Justice of the Supreme Court
of the State of New York,

Nassau County,
Old Country Road,
Mineola, Long Island, N. Y.

HONORABLE SIR:

At the conclusion of the trial of the above entitled action on February 2, 1951 when I was about to make motions with [fol. 674] respect to the evidence adduced by the defendant and for judgment in favor of the plaintiffs, with my reasons based upon the trial record and the law applicable thereto, you directed that in lieu thereof I make the same in writing in letter form. Accordingly, I herewith submit for your consideration and determination certain motions of the plaintiffs hereinafter stated to be incorporated in the stenographic trial record in said action with the same force and effect as if made orally at the conclusion of said trial, viz:

I. The plaintiffs request that the trial court take judicial notice of the fact that commercial banks in the State of New York inclusive of National Banks who operate a time deposit or pass book account department paying interest on time deposits or pass book accounts have employed in their business and in advertising media soliciting such accounts, trade terms describing same as "Thrift Account" or "Compound Interest Account" or "Special Interest Account". That such terms have become generally and commonly understood by the public as meaning interest bearing deposits of money in commercial banks and the

withdrawal therefrom by the depositor from such account by means of a pass book.

II. The plaintiffs move to strike from the record the testimony of Professor Matthew N. Chappell, Willard R. Simmons, Ohnmacht, Richard Brumbach, William J. Boyle, Hope Butt, Hilda Barnes and of the other persons associated in the so-called "Hofstra Survey" and all of the defendant's exhibits in evidence documentary thereof [fol. 675] dealing therewith and the opinions of all or any of them oral or written intending by the defendant to show extent of public's knowledge of certain terms used by financial institutions, i. e., (a) "Savings Account", (b) "Compound Interest Account", (c) "Special Interest Account" and (d) "Thrift Account" because:

A. The matters embraced in such survey are matters of common knowledge and therefore not subject to expert opinion evidence.

B. That said witnesses so engaged in making the said "Hofstra Survey" were not licensed detectives or deputized as such, and in violation of Article 7 of the General Business Law had gathered the said evidence embraced in such "Hofstra Survey" intended to be presented in a civil trial for a reward or compensation received by them.

C. That said evidence violated the hearsay rule.

D. That the opinions expressed orally by Professor Chappell, Willard R. Simmons, Richard Brumbach, and by the alleged supporting documentary evidence, notably defendant's exhibit CC that the meaning of the terms (a) "Thrift Account", (b) "Compound Interest Account", and (c) "Special Interest Account" were not known by a majority of the inhabitants of Nassau County, were not based upon personal knowledge of the witnesses and such opinions were received and expressed by them without a hypothetical [fol. 676] question being given them which included the assumption of the truthfulness of the facts in evidence. Moreover, the Court permitted such opinion to be expressed and to be presented by supplemental documentary evidence on matters totally derived through hearsay.

E. That it affirmatively appeared from the admission made by Richard Brumbach upon cross examination that

the ages of the respondents involved in said "Hofstra Survey" were not factual, but arrived at by pure estimate and speculation on the part of the interviewer so that the basic requirement of the survey that each respondent to be interviewed must be at least 21 years of age is lacking, thus rendering the survey valueless.

F. It affirmatively appeared from the admission of Richard Brumbach, as associate Professor and collaborator of Professor Chappell, upon cross examination that if all or a majority of the 928 persons involved were ineligible to open a time deposit account because they had no job, income or property, the "Hofstra Survey" could not accomplish the purpose intended and that the conclusions thereof were erroneous. There is no evidence in the trial record and there is no presumption in law that any or all of those 928 persons interviewed and who formed the basis of the "Hofstra Survey" were eligible to open a time deposit account.

G. That the "Hofstra Survey" and its conclusions are refuted by other evidence adduced, namely the [fol. 677] testimony of Mr. Roth, the defendant's President, who on cross examination testified that commercial banks in Nassau County, out of a population of approximately 666,000 inhabitants inclusive of infant children had depositors approximating 125,000 in number, who had time deposit or pass book accounts in such commercial banks. A fortiori, it is of no legal significance nor materiality to the issues in this action whether the public knew or did not know the meaning of the terms (a) "Thrift Account", (b) "Compound Interest Account" and (c) "Special Interest Account" for the same could not by any process of reasoning sustain the defendant's contention that such lack of knowledge constituted in the light of Section 258, subdivision 1 of the New York State Banking Law an interference by the State of New York with the purpose of a National Bank's creation and tends to impair or destroy its efficiency as a federal agency. The fact that the defendant itself enjoyed 30,000 time deposit or pass book accounts out of the total number of 125,000 similar accounts in the commercial banks doing business in Nassau County makes such contention on the part of the defendant ludi-

crous. In the final analysis, the question is posed what difference does it make whether the public knows the meaning of the three terms, namely (a) "Thrift Account", (b) "Compound Interest Account" and (c) "Special Interest Account" so long as commercial banks received the benefits of time deposits or pass book accounts in such large numbers.

[fol. 678] H. Even if we assume, as the defendant contends that a lack of knowledge of a majority of the public as to the meaning of the three terms, (a) "Thrift Account", (b) "Compound Interest Account" and (c) "Special Interest Account" tends to place it at a disadvantage in competing with savings banks and savings and loan associations who are permitted to use the trade terms "saving" or "savings" which we deny for reasons aforesaid, the "Hofstra Survey" and its findings on the subject merely covers a condition in Nassau County and not in the other 61 counties of the State. In view of the fact that Section 258, subdivision 1 of the New York State Banking Law is not local and restricted to Nassau County, but rather to all of the 62 counties of the State, it is obvious that the "Hofstra Survey" can hardly be considered probative as to the public's knowledge of the subject throughout the State. In this connection, it must be borne in mind that the experts who planned and executed the "Hofstra Survey" admitted that their findings were restricted to Nassau County only, and does not reflect the knowledge of the public elsewhere in the State. Moreover, the irrefuted testimony given by Mr. Ludemann, the Deputy Superintendent of Banks of the State of New York established that outside of the City of New York, pass book accounts in commercial banks approximates \$1,100,000,000. In view of the testimony of Mr. Roth, defendant's President that the average pass book account is \$1,000, the time deposits of \$1,100,000,000 represents 1,100,000 pass book accounts.

[fol. 679] It should be noted here too that the uncontradicted testimony of Mr. Ludemann established also that commercial banks doing business outside of New York City made special effort to obtain pass book accounts and that by reason thereof were successful in obtaining a ratio between their demand deposits and time deposits of 3 to 1 in

favor of demand deposits and whereas New York City commercial banks and those in Nassau County did not make a comparable effort, the ratio between demand deposits and time deposits were 14 to 1 in favor of demand deposits. In any event, all of this evidence supplemented by the facts revealed in the statistical report and contained in Defendant's Exhibit NN shows that commercial banks throughout the State inclusive of National Banks have pass book accounts numbering in the millions and in the billions of dollars in the aggregate. In view of the statistical facts, the claim and contention of the defendant that Section 258, subdivision 1 of the New York State Banking Law tends to interfere with the purpose of defendant's creation as a National Bank and to impair or destroy its efficiency as a federal agency is untenable.

The defendant's counsel have cited cases and text book authority in its brief submitted to the Court which they claim sustain their contention that the "Hofstra Survey" is admissible in evidence as an exception to the hearsay rule. However, an examination by the Court of the mentioned citations, will convincingly establish that same have no application to the facts and circumstances of this case. [fol. 680] None of the authorities cited by the defendant's counsel expresses an Appellate Court's Opinion holding that sample surveys of public opinion or knowledge on any subject are competent evidence in a civil or criminal trial as an exception to the hearsay rule. The only cases where such evidence was ever received appears to be restricted to cases involving unfair competition where goods of one are palmed off as those of another. Even in those cases, the Courts have held such testimony to be unreliable.

In *Oneida Ltd. v. National Silver Co.*, 25 N. Y. Supp. (2d) 271, decided by the Special Term of the Supreme Court, Madison County cited by defendant's counsel in their brief at pp. 2 to 4 inclusive to support their contention that the so-called "Hofstra Survey" was admissible in evidence omitted to include this significant observation of the Court at page 286 of the Opinion in the case, viz.,

"The weight and sufficiency of this evidence (plaintiffs public opinion survey) is another question. * * *

The defendant, reserving its right under its objection, made a similar survey * * *. The results of both surveys were, in my opinion, inconclusive; and I do not attach weight to this part of the evidence."

The opinion of the Court in that case does not support the contention of the defendant's counsel that the Court in the cited case held that the survey was competent but did not attach any weight thereto "only because of error in the [fol. 681] method used—a factor which the Hofstra Survey in the present case has eliminated."

Also in the case of *Dupont Cellophane Co. Inc. v. Waxed Products Co. Inc.*, 85 Fed. (2d) 75 cited by defendant's counsel, there is no statement by the Circuit Court of Appeals as claimed by them that the results of a survey of public opinion is competent evidence. We cannot infer such ruling as an inference from the text of the Court's opinion. Other than the Court's conclusion at page 80 that "such proofs have no great weight" nothing else appears. This statement by the Court, I submit does not lend itself to an interpretation that such evidence is competent as an exception to the hearsay rule.

Further, in the case of *Metropolitan Opera Ass'n v. Pilot Radio Corp.*, 189 Misc. Rep. 505 cited by the defendant's counsel, Judge Shientag sitting at Special Term for motions did not have the occasion to pass upon the competency of a survey of public opinion as a matter of evidence, since the issues before him was not as a trial court, but rather on a motion for a temporary injunction to prevent unlawful competition. The moving papers did however show by a shopping survey of 25 retail stores that in 70% of the sales of music recordings made and distributed by the defendant under an advertisement "featuring the Metropolitan Symphony Orchestra" tended to confuse the public that the recordings were made by the plaintiff, the Metropolitan Opera Ass'n. In addition to other facts submitted to the Court the survey merely tended to cumulatively indicate that the plaintiff had a meritorious cause of action [fol. 682] warranting the granting of a temporary injunction. The Court obviously did not have need to pass upon the competency of this evidence.

However, the other authorities cited by defendant's counsel to support their contention that the "Hofstra Survey" is admissible in evidence as an exception to the hearsay rule are not in point and have no application to the facts and circumstances in this case. Any further discussion thereon would tend to belabor the obvious.

III. The plaintiffs move for judgment enjoining the acts complained of.

The uncontradicted evidence presented by the plaintiffs upon the trial of the action shows a clear violation by the defendant of the provisions of Section 258, subdivision 1 of the New York State Banking Law. This statute obviously is the exercise by the State of New York of its police power. The police power under the American Constitutional System has been left to the States (*Keller v. United States*, 213 U. S. 138; *Patterson v. Kentucky*, 97 U. S. 501). It has always belonged to them and was not surrendered by them to the general government or directly restricted by the Constitution of the United States (*Hammer v. Dagenhart*, 247 U. S. 251; *House v. Mayes*, 219 U. S. 270). It has repeatedly been held that no provisions of the federal constitution and none of the amendments added to that instrument were intended or designed to interfere with the police power of the various States (*Butchers' Union S. H. & L. S. L. Co. v. Crescent City L. S. L. & S. H. [fol. 683] Co.*, 111 U. S. 746; *Holden v. Hardy*, 169 U. S. 366).

Each State has the power therefore to regulate the relative rights and duties of all persons, individuals and corporations within its jurisdiction for the public convenience and the public good (*State ex rel. Smith v. Fidelity & D. Co.*, 191 N. C. 643, 132 S. E. 792 [writ of error dismissed in 275 U. S. 505]). The only limit to State exercise of power in the enactment of police laws is that they shall not prove repugnant to the provisions of the State or National Constitution.

See also 11 American Jurisprudence on Constitutional Law § 255, pp. 986, 987.

The police power of the State is not limited to regulations necessary for the preservation of good order or the public health and safety. The prevention of fraud and deceit and cheating and imposition is equally within the power (*Mer-*

chants Exch. v. Missouri, 248 U. S. 365; *Hall v. Geiger-Jones Co.*, 242 U. S. 539). Therefore, a State may prescribe all such regulations as, in its judgment, will secure or tend to secure the people against the consequences of fraud (*Hawker v. New York*, 170 U. S. 189; *People v. Guiton*, 210 N. Y. 1; *People v. Luhrs*, 195 N. Y. 377, 25 L. R. A. [N. S.] 473) and may institute any reasonable preventive remedy required by the frequency of fraud, or the difficulty experienced by individuals circumventing it, especially when other means have not proved efficacious (*State v. De Verges*, 153 La. 349, 95 So. 805, 27 A. L. R. 1526; *People v. Dehn*, 190 Mich. 122, 155 N. W. 744, citing R. C. L.; *People v. Wag-* [fol. 684] *ner*, 86 Mich. 594, 49 N. W. 609, 13 L. R. A. 286, 24 Am. St. Rep. 141).

See also 11 American Jurisprudence on Constitutional Law § 273, p. 1027.

In accordance with the settled principle that no part of the federal constitution was intended to hamper a valid exercise of State police regulation as above stated, it is particularly established by overwhelming authority that the Fourteenth Amendment was not designed to interfere with (*Louisville & N. R. Co. v. Melton*, 218 U. S. 36; *Keller v. United States*, 213 U. S. 138; *Giozza v. Tiernan*, 148 U. S. 657), and does not interfere with (*Nebbia v. New York*, 291 U. S. 502; *Lacoste v. Department of Conservation*, 263 U. S. 545), curtail (*Re Rahrer* [*Wilkerson v. Rahrer*], 140 U. S. 545), restrain (*Pacific Gas & E. Co. v. Police Ct.*, 251 U. S. 22), destroy (*Cunnius v. Reading School Dist.*, 198 U. S. 458), or take from the States (*Terrace v. Thompson*, 263 U. S. 197) the right duly and properly to exercise the police power. Furthermore, this amendment does not limit the subjects upon which the police power of a State may be exerted (*Cunnius v. Reading School Dist.*, 198 U. S. 458; *Brim v. Jones*, 165 U. S. 180).

In discussing the relationship between the guarantees of the Fourteenth Amendment and the police power of the States, Justice Holmes in *Noble State Bank v. Haskell*, 219 U. S. 104, 110, has pointed out with equal application to the facts and circumstances in the case at bar:

“* * * we must be cautious about pressing the broad words of the Fourteenth Amendment to a

[fol. 685] drily logical extreme. Many laws which it would be vain to ask the court to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guarantees in the Bill of Rights. They more or less limit the liberty of the individual or they diminish property to a certain extent. We have few scientifically certain criteria of legislation, and as it often is difficult to mark the line where what is called the police power of the States is limited by the Constitution of the United States, *judges should be slow to read into the latter a nolumus mutare as against the law-making power.*" (Emphasis supplied.)

See also 11 American Jurisprudence on Constitutional Law § 261, pp. 995, 997.

Determinative of the issues in this case is the universal rule of application promulgated by the United States Supreme Court, namely that it should never be held that Congress intends to supersede or by its legislation, suspend the exercise of the police powers of the States, even when it may do so, unless the purpose to effect the result is clearly manifested (*Reid v. Colorado*, 187 U. S. 137, 148; *Southern Pacific Co. v. Arizona*, 325 U. S. 761, 766).

See also 11 American Jurisprudence on Constitutional Law § 255, p. 988.

In *Reid v. Colorado*, 137, 148, the United States Supreme Court in repudiating the contention made by the defendant in the case at bar that the National Banking [fol. 686] Act (12 U. S. C. A. § 371) should be construed by implication so as to supersede or suspend the exercise of the police powers of New York by the enactment of Section 258, subdivision 1 of the New York State Banking Law, pertinently stated:

"It should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police powers of the States, even when it may do so, unless its purpose to effect that result is clearly manifested. This court has said—and the principle has been often reaffirmed—that 'in the application of this principle of supremacy of an act of Congress in a case

where the State law is but the exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together.' *Sinnot v. Davenport*, 22 How. 277, 243."

Again in *Matter of Coronet Hotel Corp. v. Coster*, 196 Misc. Rep. 610, 612, the Court made this significant observation:

"All parties to this controversy recognize the well-established principle that when Congress has acted with intent to pre-empt the field of regulation in a matter over which Congress has authority to rule, State and local laws must yield to the Federal statute (*Southern Ry. Co. v. Railroad Comm. of Indiana*, [fol. 687] 236 U. S. 439; *Pennsylvania R. R. Co. v. Public Service Comm.*, 250 U. S. 566).

Before this principle of the supremacy of an act of Congress can be applied, however, the 'repugnance or conflict should be direct and positive, so that the two acts [can] not be reconciled or consistently stand together'. (*Sinnot v. Davenport*, 22 How. [U. S.] 227, 243; *Missouri, K. & T. Ry. Co. v. Haber*, 169 U. S. 613, 623; *Reconstruction Finance Corp. v. Central Republic Trust Co.*, 17 F. Supp. 263, *affd. sub nom. Reconstruction Finance Corp. v. McCormick*, 102 F. 2d 305, *certiorari denied* 308 U. S. 558.)

It should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police powers of the States, even when it may do so, 'unless its purpose to effect that result is clearly manifested.' (*Reid v. Colorado*, 187 U. S. 137, 148.)

This necessity for a clear manifestation of Congressional intent to prevent the States from exercising their police powers has been repeatedly emphasized (*Missouri, K. & T. Ry. Co. v. Harris*, 234 U. S. 412; *Allen-Bradley Local v. Wisconsin Employment Relations Bd.*, 315 U. S. 740, 749; *Matter of Davega-City Radio v. State Labor Relations Bd.*, 281 N. Y. 13). *Such intent is not to be inferred from the mere fact that Congress has seen fit to circumscribe its legislation and to oc-*

copy a limited field (*Savage v. Jones*, 225 U. S. 501, [fol. 688] 533). Even if the Federal Government has legislated in a particular field, local regulation in that field is not necessarily prohibited unless national uniformity is essential. The State or municipal statute will be stricken only if—in terms or in practical administration—it conflicts with the Federal law or infringes on its policy (*Hill Packing Co. v. City of New York*, 295 N. Y. 527; *Southern Pacific Co. v. Arizona ex rel. Sullivan*, 325 U. S. 761, 766).” (Emphasis supplied.)

It is obvious that the National Banking Act (12 U. S. C. A. § 371), does not clearly manifest an intention of Congress to supersede the regulatory provisions of Section 258, subdivision 1 of the New York State Banking Law. Moreover, the New York Statute is not repugnant or in conflict with the provisions of 12 U. S. C. A. § 371 because of the following considerations. It should be borne in mind that the general term of the Supreme Court in *People v. Binghamton Trust Company*, 20 N. Y. Supp. 179, 183, affd. 139 N. Y. 185, 190 expressed the opinion that the New York State statute did not intend to confer upon savings banks a monopoly of the class of business usually transacted by them, but rather to protect the public against deception or imposition by prohibiting the receiving and soliciting deposits by any person, firm, corporation or association, under the claim or pretense of being a savings bank. The general term opined that “the manifest purpose of the section [fol. 689] (Banking Law § 258) was to render it unlawful to advertise, put forth a sign, solicit or receive deposits claiming or pretending to be a savings bank.” The Court of Appeals in affirming the general term in words and substance held the same view as its reported Opinion indicates.

It is apparent therefore that the statute claimed by the defendant to be constitutionally invalid does not prohibit any commercial bank inclusive of the defendant, a national bank, to receive time deposits and to pay interest thereon as a natural incident of all banking business. On the other hand, the National Banking Act. (12 U. S. C. A. § 371) authorizing national banks “to receive time and savings de-

posits and to pay interest on the same," does not expressly authorize national banks to solicit or receive deposits by word, such as "savings," act or deed claiming, representing or pretending to be a savings bank, nor can such intention be implied from the statute itself for reasons aforesated and as hereinafter amplified. Hence, both the State statute and the National Banking Act are reconcilable and not conflicting in their provisions.

The attention of the Court is directed to the fact that the defendant does not contend that the use by commercial banks inclusive of national banks in the State of New York of the prohibited terms "saving" or "savings" or their equivalent in advertising media soliciting time deposit or pass book accounts in connection with their business is indispensable thereto. However, the effect of the expert testimony [fol. 690] by Messrs. Evans and Abel and others, officers of national banks that the prohibition of the State statute is a hardship upon national banks generally, is merely conclusory without any facts in evidence to sustain such speculative opinion. Moreover, in the face of the statistical facts in evidence establishing that commercial banks inclusive of national banks enjoy millions of time deposit or pass book accounts totalling billions of dollars in the aggregate, the opinion so expressed by the officers of the national banks called as witnesses by the defendant, and who undoubtedly were motivated by self-interest is valueless. Also, the fact that commercial banks and national banks have annually within the last ten years increased their volume of time or saving deposit accounts in such large numbers and amount above stated, renders the contention by the defendant that the prohibition of the State's statute tends to impair or destroy defendant's efficiency as a federal agency untenable.

Very significant here is the consideration that the defendant as one out of 46 commercial banks doing business in Nassau County has 30,000 time deposit or pass book accounts out of a total of 125,000 such accounts held by it and the others, and that the defendant during the year 1950 had set up three additional branches in Nassau County because these factual features show prosperity not frustration nor impairment of efficiency.

In addition, People's Exhibit No. 36 in evidence, which represents defendant's financial prosperous condition as of December 31, 1950, and also the defendant's expanded [fol. 691] growth and business through the years as indicated therein stamps as specious defendant's argument that the State Banking Law tends to impair or destroy the efficiency of national banks, which are in the final analysis commercial banks.

I wish to mention here too that the Presidents of national banks who testified as expert witnesses for the defendant, despite their claim that their banks, national banks and commercial banks generally considered the prohibition of the State Banking Law (§258) a hardship because they were compelled to use such trade terms as "Thrift Account", "Special Interest Account" or "Compound Interest Account" were forced to admit on cross examination that their institutions during the last five years had increased their time deposit or pass book accounts in numbers and the amount in dollars of such deposits, and were enjoying greater prosperity each year by reason thereof, as did the other national banks and commercial banks throughout the State.

Aside from the fact that Section 258 of the Banking Law of the State of New York as an exercise of police power was not superseded by the National Banking Act, Federal Reserve Act or any other paramount federal statute because there was no clear manifest expression of Congress to that effect under the authorities above mentioned, the Federal Reserve Act (12 U. S. C. A. §371) upon a careful examination thereof does not lend itself to a construction so as to authorize the defendant, as a national bank by implication to advertise for time deposits or pass book accounts by the use of the prohibited term [fol. 692] "savings" because of these observations. National banks are commercial banks as distinguished from savings banks and are regarded to be engaged in different classes of banking (see Argument in Points II and III of main brief; 12 American Jurisprudence on Constitutional Law, §506, pp. 187 and 188). Independent of statute, all classifications of banks inclusive of national banks and savings banks have the right as an incidental and necessary power to receive deposits and to pay interest thereon

(*People v. Binghamton Trust Company*, 20 N. Y. Supp. 179, 183 aff'd 139 N. Y. 185; authorities cited at p. 13 of main brief). If that be so, one may ask then why was it necessary for Congress to amend the Federal Reserve Act (12 U. S. C. A. §371) to empower national banks

“* * * continue hereafter as heretofore to receive time and savings deposits and to pay interest on the same, but the rate of interest which such associations may pay upon such time deposits or upon savings or other deposits shall not exceed the maximum rate authorized by law to be paid upon such deposits by State banks or trust companies organized under the laws of the State in which such association is located?”

The simple answer is that for some time prior to the amendment above quoted, many people questioned the authority of national banks to receive time deposits or pass book accounts, and to pay interest thereon because the powers of national banks enumerated in 12 U. S. C. A. [fol. 693] §24 did not expressly authorize the same. However, national banks did have such power as a natural incident of banking and by express provision of the National Banking Act recognizing the same, so that the amendment of the Federal Reserve Act above quoted (12 U. S. C. A. §371) was unnecessary because the National Banking Act (12 U. S. C. A. §24) also provided:

“Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; * * *”

That Congress recognize that the right of national banks to receive time deposits or pass book accounts existed independent of statute, or that such right was implicit in the provisions of the Federal Reserve Act (12 U. S. C. A. §24) is clearly manifested by the wording of the amendment (12 U. S. C. A. §371) which significantly provides that national banks may “* * * continue here-

after as heretofore to receive time and savings deposits and to pay interest on same * * *

In construing the Federal Reserve Act, your Honor may consider the contemporaneous circumstances (*United States v. Anderson*, 76 U. S. 56; *Feitler v. United States*, 34 F. (2d) 30, cert. granted; *Danovitz v. United States*, 280 U. S. 548 aff'd 281 U. S. 389), the clause of the Federal [fol. 694] Reserve Act above quoted and the necessity for it, the object in view and the evil which it is intended to remedy should always be taken into consideration by the Court (*Stirling v. United States*, 48 Ct. Cl. 386).

Since the trial record in the case shows by the testimony of Mr. Ludemann, the New York Deputy Superintendent of Banks, the defendant's expert witnesses in the person of national banks presidents, inclusive of Mr. Roth, defendant's president that in the banking business the term "savings deposits" are included in the term "time deposits," the term "savings deposits" employed in the amendment to the Federal Reserve Act (12 U. S. C. A. §371) may be considered loose and unnecessary verbiage, for by such amendment Congress undoubtedly never intended to confer powers of a savings bank in the accepted sense, upon national banks. It would, therefore, appear that the term "savings deposits" in the amendment to the Federal Reserve Act following the term "time deposits" in the amendment must be considered as a colloquial expression intended to mean "pass book accounts."

The power of the Court, so to do, is under the rule of construction of statutes that when words occur in a statute which can be given no effect consistent with the plain intent of the statute, they must be rejected as without meaning (*United States v. Jackson*, 143 F. 783, 75 C. C. A. 41, reversing C. C. 1905 ex parte Jackson 140 F. 266). Words added to a statute as in the case at bar out of an obvious abundance of caution should not be given weight beyond [fol. 695] their purpose (in re *Bolster* 66 F. Supp. 566). A Court is not compelled to apply a clause in a statute literally or at all, if such application will result in applying the statute as a whole in a way completely contradictory of its paramount purpose (*Arkansas Oak Flooring Co. v.*

Louisiana & A. Ry. Co., 166 F. (2d) 98 cert. denied 334 U. S. 828).

For your Honor to construe the amendment to the Federal Reserve Act (12 U. S. C. A. §371) enacted August 23, 1935 under the Laws of United States, Chapter 614 §§ 208, 328, 49 Stat. 706, 717 in the aforementioned circumstances as a power by implication to the defendant as a national bank to solicit "pass book accounts" by the use of the prohibited term "savings" as the defendant contends would be placing a strained construction on the Federal Reserve Act and put a meaning thereon obviously never intended by Congress. Such construction if given by the Court in the case at bar would be tantamount to legislation by the judiciary and usurpation of the legislative prerogatives. An interpretation of statutes can not extend to amendment or legislation, nor can considerations of an apparent hardship justify a strained construction of the law as written (*Ladew v. Tennessee Copper Co.*, 179 F. 245, 252, aff'd 218 U. S. 357). A statute should be so construed as to effectuate its evident purposes (*Securities and Exchange Commission v. Associated Gas & Electric Co.*, 24 F. Supp. 899, aff'd 99 F. (2d) 795).

Moreover, the Federal Reserve Act (12 U. S. C. A. §461) referring to Section 371b thereof which deals with a regulation of the rate of interest on the time deposits [fol. 696] to be paid by national banks significantly defines the term "savings deposits" as "time deposits" intended to be included in the terminology of the latter. The pertinent provisions of such statute (12 U. S. C. A. § 461) reads as follows:

"* * * that, within the meaning of the provisions of this section and sections * * * 371b. * * * of this title regarding the reserves required of member banks, the term 'time deposits' shall include 'savings deposits'."

This statutory definition must prevail, regardless of what other meaning may be attributable to the terms of the statute by other authorities or even by common understanding (*Emery Bird Thayer Dry Goods Co. v. Williams*, 98 F. (2d) 166 reversing 15 F. Supp. 938, reversed C. C. A. 107 F. (2d) 965. Set aside on rehearing 107 F. (2d) 965

cert. denied *Williams v. Emery Bird Thayer Dry Goods Co.*, 309 U. S. 655; *Cohtran & Co. Connaly v. U. S.* 276 F. 48 aff'd 283 F. 973). The fact that the term "savings deposits" by statutory definition of Congress is deemed to be included in the term "time deposits" lends weight to my contention that the term "savings deposits" is mere surplusage and must be construed as a colloquial expression to mean "pass book accounts" and was never intended to authorize the defendant as a national bank to use the term "saving" or "savings" or their equivalent in any advertising media in the solicitation of "time deposits" for its savings department. It should be noted here that the savings [fol. 697] department of a national bank is not a savings bank in the technical sense (*Hernandez v. First National Bank of Omaha*, 249 N. W. 592, 125 Neb. 199).

This contention finds support in the rule that all statutes in *pari materia* are to be read and considered together (*United States v. Colorado & N. W. R. Co.*, 157 F. 321, cert. denied 209 U. S. 544). Therefore, the Federal Reserve Act which was amended on August 23, 1935 containing provisions, among others, granting national banks the right to receive "time deposits or savings deposits" (12 U. S. C. A. § 371), regulated the rate of interest thereon (12 U. S. C. A. § 371b) and defined the term "time deposits" as indicating the term "savings deposits". All of these specified amendments were enacted by Congress at the same time. *A fortiori* they are to be read and considered together.

The fact that there was a difference of opinion on this very same subject between the United States Comptroller of Currency and the Banking Department of the State of New York since 1938 without Congressional clarification on the subject by appropriate amendment implementing the National Banking Act or the Federal Reserve Act at the insistence of the United States Comptroller of Currency reasonably supports my view that the Federal Reserve Act (12 U. S. C. A. § 371) is not a paramount statute superseding Section 258, subdivision 1 of the New York State Banking Law.

It has been claimed by the defendant in support of its contention that the denial by the State of its right to use

the term "savings" in the solicitation of "pass book accounts" [fol. 698] counts" for its business tends to reduce such business to a point where it could not comply with the requirement that it purchase United States securities inclusive of United States Savings Bonds. Of course, the trial record fails to support such contention. In any event, such contention is based upon mere speculation for apparent reasons. However, defendant claims that such situation tends to interfere with the purpose of its creation as a federal instrumentality. This contention is based upon a false premise for the reason that there is no compulsion in law for a national bank or any other type of bank to purchase United States Savings Bonds or other securities. Such matter is one of discretion with each particular bank, and as a matter of practice part of the investments by all classifications of banks inclusive of national banks are in the United States securities inclusive of United States Savings Bonds.

In this regard, all banks are on the same footing with the investing public. Even if we assume *arguendo* that the "time deposits" of the defendant and other banks generally would be diminished by the denial of the right to use the prohibited terms "saving" or "savings" or their equivalent and thereby reduce their ability to purchase sufficient United States Government securities, which I deny, this situation would not support the defendant's contention that Section 258, subdivision 1 of the New York State Banking Law tends to interfere with the purpose of its creation, because the National Banking System was devised solely to provide a national currency secured by [fol. 699] a pledge of United States Bonds, and national banks are agencies or instruments of the Government for that purpose exclusively (*Davis v. Elmira Savings Bank*, 161 U. S. 275). It thus appears that the national banks were not created as a means for the United States Government of financing its requirements by compulsion of law. This becomes all the more crystal clear when we recall that national banks are private enterprises for profit and gain and enures to the stockholders thereof.

To confuse the issues, the defendant has seen fit to contend that the State's statute had the effect of prohibiting

the defendant from putting up in its banking establishments posters and to include in its advertising media, the words "Buy United States Government Bonds". Such contention is untenable for the reason that Section 258, subdivision 1 of the New York Banking Law prohibiting national banks and commercial banks from the use of the term "saving" or "savings" or their equivalent expressly limits the use of the prohibited terms by the defendant "in its business". The sale of United States Government Bonds is not a part of the defendant's business and in effecting a sale for the Government, it acts as the Government's fiscal agent, for which this defendant as a national bank, like other State banks inclusive of savings banks, receives a few pennies for similar services to the United States Government on a voluntary basis. Moreover, there is nothing in the law which compels national banks or any State bank inclusive of savings banks to act as such fiscal agent for the sale of United States Savings [fol. 700] Bonds or other securities. This is however done by all classifications of banks as a matter of patriotic service rather than as a matter of business. National banks are not the exclusive fiscal agents for the United States Government in the sale of its savings bonds. State banks perform similar service for a nominal consideration.

The defendant has made much ado of the fact that it was required and did make periodic financial reports to the United States Comptroller of Currency on forms furnished by him which dealt in part with data dealing with its "time deposits" under the heading of "savings deposits" printed in the forms so furnished by him. This evidence was introduced by the defendant to support their contention that same had probative value upon the construction by the trial court of the "Federal Reserve Act" (12 U. S. C. A. § 371) that same was a superseding paramount statute because the New York statute allegedly contemplated a prohibition of the use by the defendant of the term "savings deposits" in such reports. Inferentially the defendant argued that the enforcement of the New York Statute by the granting of the permanent injunction sought by this action would enjoin the defendant from using the forms of the United States Comptroller of Currency be-

cause of the data required therein under the heading "savings deposits". All of this argument by the defendant is without legal force because it has already been demonstrated that under the adjudicated Federal and State cases construing the purpose of Section 258, subdivision 1 of [fol. 701] the New York Banking Law, it was ruled that financial institutions not authorized as a savings bank or savings loan association were enjoined "in its business" with the public from using the prohibited terms because of their tendency of deceiving the public in believing that such financial institutions were not organized or authorized as savings banks with all of their attendant benefits. The statute also plainly indicates that all advertising by such unauthorized financial institutions are restrained from using the prohibited terms in relation to their business. A fortiori, the use of the term "savings deposits" in private and confidential reports by national banks to the United States Comptroller of Currency can hardly be said to be public deception within the spirit and letter of the statute or that the use of the term "savings deposits" in such report was "in its (defendant's) banking or financial business" so as to violate the statute.

During the course of the trial defendants' counsel endeavored without success to introduce in evidence two pamphlets which he claimed to be regulations made by either the United States Comptroller of Currency or the Board of Governors of the Federal Reserve System, which he claimed would tend to aid the Court to arrive at a construction of the Federal Reserve Act (12 U. S. C. A. § 371) sustaining defendants' contention that it was a paramount and superseding statute by implication. Such offered documentary proof was not properly authenticated and was on my objection excluded not only on that ground but also because of the contention that the contents thereof [fol. 702] were otherwise incompetent immaterial.

Since the trial of the action, I was informed by Herbert Dannett, Esq., one of defendants' associate counsel, that the aforementioned regulations were published in the Federal Digest and that in conformity with the principle enunciated in *Quaker Oats Co. v. City of New York*, 295 N. Y. 527, your Honor will be urged by the defendant to

take judicial notice thereof. Not having a copy of such regulations and not having the reference thereto in the Federal Digest, I have no means of knowing the text or substance thereof. However, of one thing I am certain, i. e. that any regulations which either the United States Comptroller of Currency or the Board of Governors of the Federal Reserve System might have made to implement the Federal Reserve Act could not lawfully extend or amplify the same (12 U. S. C. A. § 371) so as to expressly authorize national banks to advertise for "time deposits" by the use of the term "sav-ng" or "savings" or their equivalent because the measure of powers of national banks is the statutory grant, and powers not conferred by Congress are denied (*City of Yonkers v. Downey*, 309 U. S. 590; *Texas & Pac. Ry. Co. v. Pottoroff*, 291 U. S. 245). Moreover, no power is conferred upon an administrative government agency to make and enforce an interpretation of laws affecting such agency; such power being a judicial one, to be exercised by the Courts alone (*U. S. ex rel Kreh v. Ingham*, 38 App. D. C. 379). In the final analysis, the power of an administrative officer to prescribe regulations [fol. 703] (5 U. S. C. A. § 22) does not carry with it the power to make law (*U. S. v. Powell*, 95 F. [2d] 752, certiorari denied 305 U. S. 519). Then again, regulations must be consistent with law; they may not be extended so as to alter, amend or defeat a law already enacted by Congress (*Morrill v. Jones*, 106 U. S. 466. *Campbell v. U. S.*, 107 U. S. 407; *Williamson v. U. S.*, 207 U. S. 425). In this connection, it is of special significance that the Federal Reserve Act (12 U. S. C. A. § 461) expressly enjoins the Board of Governors of the Federal Reserve System adopting or promulgating any regulations defining the terms "time deposits" and "savings deposits" which gives both of these terms separate meaning it being provided in said Act that "the term 'time deposit' shall include 'savings deposits'".

Paton's Digest and the Opinions of General Counsel to the Federal Reserve Board and the United States Comptroller of Currency cited by counsel for the defendant in their trial brief (pp. 13-18) as authority for construing the Federal Reserve Act as a right by implication conferred

by Congress upon national banks to advertise for "time deposits" by the use of the term "savings" are obviously valueless as authority for such proposition urged by the defendant, since same are based upon the erroneous premise that a statute representing an exercise of the police power of the State can be destroyed or superseded by implication of the provisions of a Federal statute. However, as we have already observed the weight of authority is that no implied right can be deemed conferred by an act of Congress to [fol. 704] supersede or destroy an exercise of the police power of the State as exemplified by Section 258, Subdivision 1 of the New York State Banking Law.

Section 258, subdivision 1 of the New York State Banking Law does not, as the defendant contends, unduly discriminate against national banking associations located in New York State nor handicap them substantially to compete with savings banks and savings and loan associations.

It is a general rule that legislation which affects alike all persons pursuing the same business under the same conditions is not such class legislation as is prohibited by constitutional provisions (12 American Jurisprudence on Constitutional Law §§ 504 and 505, pp. 185-187 and the cases there cited). The discriminations which are open to objection are those in which persons engaged in the same business are subjected to different restrictions or are held entitled to different privileges under the same conditions (*Minneapolis & St. L. R. Co. v. Beckwith*, 129 U. S. 26; *Soon Hing v. Crowley*, 113 U. S. 703; 12 American Jurisprudence on Constitutional Law § 505; 187). Part of the liberty of a citizen consists in the enjoyment, upon terms of equality with all others in similar circumstances, of the privilege of pursuing an ordinary calling or trade and of acquiring, holding, and selling property (12 American Jurisprudence on Constitutional Law § 505, p. 187). The constitutional guaranty as to the equal protection of the laws, moreover, [fol. 705] requires that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under similar circumstances and that no greater burdens in engaging in a calling should be laid upon one than are laid upon others in the same calling and condition (*Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540;

Cotting v. Kansas City Stock Yards Co., 183 U. S. 79; 12 American Jurisprudence on Constitutional Law § 505, p. 187).

The practical application of the general principle of classification in accordance with the constitutional requirements as to equal protection of the laws is illustrated in the case of banks and bankers. The courts have recognized that the banking business may properly form a class by itself for legislative regulation, and that as between banks and bankers themselves, different classes may properly exist (12 American Jurisprudence on Constitutional Law § 506, pp. 186-188).

In *Provident Savings Institution v. Malone*, 221 U. S. 660, wherein the United States Supreme Court considered the constitutionality of a statute which directed savings banks to turn over to the proper State officers money in accounts inactive for 30 years, the Court held that such statute does not deprive savings banks of their property without due process of law and is not a denial of equal protection of the law, because it applies only to savings banks, the classification not being unreasonable. In that [fol. 706] case, the Court with equal application to the facts in the case at bar said at page 666:

“There is nothing unequal or discriminatory in making the act applicable only to abandoned deposits in a savings bank. The classification is reasonable. Deposits in savings banks are made in expectation that they may remain much longer uncalled for than is usual in deposits in other banks. This fact makes savings deposits all the more likely to be forgotten and abandoned. And as the depositors are often wage-earners, moving from place to place, there is special reason for intervening to protect their interest in this class of property in banks as to which the State's supervisory power is constantly exercised.”

From the foregoing, it becomes crystal clear that Section 258, Subdivision 1 of the New York State Banking Law does not discriminate against the defendant as a national bank because the legislation affects alike all commercial banks inclusive of national banks who pursue the

same business under the same conditions. This becomes all the more obvious when it is recalled that savings banks and savings and loan associations do not pursue the same business under the same conditions as commercial banks.

That the provisions of Section 258, Subdivision 1 of the New York State Banking Law was a reasonable exercise of the police power of the State, persuasively appears from [fol. 707] a reading of the published official Opinion of the Attorney General (1922, Op. Atty. Gen. 139, 140) as follows:

"Savings banks in New York have long been nurtured by the laws of this State as institutions of peculiar reliability, administered under a trust upon which the small investor and inexperienced could rely. Police power statutes are also often enacted for the purpose of protecting the public from its own folly. Bearing in mind these considerations, the statute becomes as one seeking to protect a trade name, borne by a particularly regulated and supervised class of institutions from an unfair competition. It likewise becomes clear that business rivals seeking to profit from the 'savings' public find it desirable to imitate or at least, derive the benefit of a name long used by institutions so solidly founded and protected. Reasons for a literal reading of the statute thus become apparent."

In 7 American Jurisprudence on Banks, Section 13, p. 33, it is appropriately stated:

"Not all regulation of a national bank by the state in which it is situated is prohibited. The doctrine of noninterference by a state with the operations of a national bank protects the bank only from such legislation as tends to impair its utility as an instrumentality of the Federal government. A national bank is subject to the laws of the state in which it is located in respect of its affairs if such laws do not interfere [fol. 708] with the purpose of its creation, tend to impair or destroy its efficiency as a Federal agency, conflict with the paramount laws of the United States, or discriminate against such national bank."

respectfully submit that under the authorities cited by main and supplemental briefs heretofore delivered to the Court and above stated, the plaintiffs are entitled to a permanent injunction as prayed for in the complaint because the uncontradicted evidence shows a clear violation of Section 258, Subdivision 1 of the New York State Banking Law. Moreover, the defendant has failed to adduce sufficient evidence or a fair preponderance of the evidence sustaining its affirmative defenses contained in its answer. Basically, therefore, we must conclude that Section 258, Subdivision 1 of the New York State Banking Law is valid and enforceable because:

- a) It is not in conflict with a Federal paramount statute and the provisions, therefore, do not interfere with the purpose of defendant's creation nor do they tend to impair or destroy defendants' efficiency as a Federal agency.
- b) It does not unduly discriminate against national banking associations located in New York State nor handicapped them substantially to compete with savings banks and savings and loan associations.

I wish to emphasize that all of the evidence adduced by the defendant tended to show that it would be convenient [cf. § 709] for national banks and commercial banks generally to be free from the restrictions of the provisions of Section 258 of the New York State Banking Law. However, such evidence does not support a possible contention that it is absolutely indispensable to conduct a profitable commercial banking business to be free of such restrictions. Accordingly, the Federal Reserve Act, aside from all other considerations, can not be deemed to confer upon national banks the right by implication to use the terms "savings" or "savings" or their equivalent because of the principle enunciated by the Court of Appeals in *Lawrence Constr. Corp. v. State of New York*, 293 N. Y. 634, 639, reiterating the Federal applicable Rule as follows:

"A statute must be read and given effect as it is written by the Legislature, not as the court may think it should or would have been written if the Legislature

had envisaged all the problems and complications which might arise in the course of its administration. A power not expressly granted by the statute is implied only where it is 'so essential to the exercise of some power expressly conferred as plainly to appear to have been within the intention of the Legislature. The implied power must be necessary, not merely convenient, and the intention of the legislature must be free from doubt.' (*Peo. ex rel. City of Olean v. W. N. Y. & P. T. Co.*, 214 N. Y. 526, 529.)"

In conclusion, I respectfully submit that it does not appear beyond a rational doubt that the New York statute is [fol. 710] unconstitutional, and under the Rule promulgated by the United States Supreme Court, the statute must be held constitutional by a Trial Court (*Sinking Fund Cases*, 99 U. S. 18; *Powell v. Pennsylvania*, 127 U. S. 678).

The defendants' appeal for relief must be to the Legislature. In this connection, the United States Supreme Court in *South Carolina State Highway Department v. Barnwell Bros.*, 303 U. S. 177, at pp. 190 and 191, pertinently said:

"When the action of a legislature is within the scope of its power, fairly debatable questions as to the reasonableness, wisdom and propriety are not for the determination of Courts, but for the legislative body, on which rests the duty and responsibility of decision."

To the same effect:

Powell v. Pennsylvania, 127 U. S. 678, 686.

A copy of this letter has this day under separate cover been mailed to Alley, Cole, Grimes and Friedman, Esqs., the attorneys for the defendant.

Respectfully yours, Nathaniel L. Goldstein, Attorney General,
By: Irving L. Rollins, Assistant Attorney General.

fol.711] PLAINTIFF'S EXHIBITS 1, 2 AND 3

Advertisement appearing in the Long Island Daily Press
on March 10 and 24, 1947, and in the Nassau Daily Review-
star on March 17, 1947:

2% Interest on Savings Accounts between \$100 and
1,000.

1½% on balances over \$1,000.

You Can Bank-By-Mail

The Franklin Square National Bank

Long Island's Leading Loan & Mortgage Institution

Franklin Square, L. I., N. Y.

Member, Federal Deposit Insurance Corp.

PLAINTIFF'S EXHIBIT 4

Advertisement appearing in Newsday, May 8, 1948:

2% More Interest Here.

Interest on Savings Accounts Between \$100 and \$1000.

1½% on Balances Over \$1000.

Franklin Square National Bank

Franklin Square, L. I., N. Y.

Member Federal Deposit Insurance Corp.

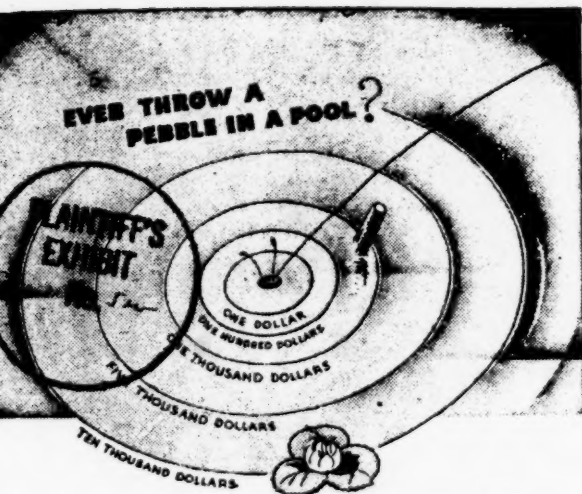
(Here follow 3 photographs, side fols. 712-713, 714-715,
716-717.)

ols. 712-713]

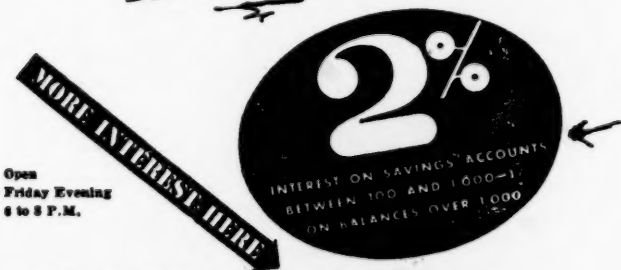
PLAINTIFF'S EXHIBIT 5

530A

ADVERTISEMENT APPEARING IN NEWSDAY,
JUNE 17, 1948



IT SHOWS THE LAW OF EXPANSION~
Start Saving Regularly NOW!



Open
Friday Evening
6 to 8 P.M.

THE FRANKLIN SQUARE NATIONAL BANK.

MEMBER FEDERAL DEPOSIT INSURANCE CORPORATION

712=713

ADVERTISEMENT APPEARING IN NEWSDAY,
JANUARY 4, 1949

530B

15

\$1
OPENS YOUR ACCOUNT

**MAKE DEPOSITS
NOW--
DRAW INTEREST
FROM JANUARY 1ST**

2%
INTEREST ON SAVINGS ACCOUNTS
BETWEEN 100 AND 10,000
ON BALANCES OVER \$100

SAVE IN PERSON — OR BY MAIL
You need not come to the bank, open your account,
make deposits, and withdrawals by mail; save time,
get more interest.
Simply print your name and address on the coupon
below. Mail it with your deposit, in any amount—
we do the rest.

THE FRANKLIN SQUARE NATIONAL BANK
THE FRANKLIN SQUARE NATIONAL BANK
Franklin Square, Long Island, N. Y.
Attached to my first deposit of \$_____ I understand
you will open a savings account in my name, credit the deposit,
send me the bank book and deposit mailing envelope.

NAME _____
ADDRESS _____
CITY, STATE No., STATE _____

The FRANKLIN SQUARE
— Natural Bank —
MEMBER FEDERAL DEPOSIT INSURANCE CORPORATION

MAIL TO: FRANKLIN SQUARE NATIONAL BANK
FRANKLIN SQUARE, LONG ISLAND, N. Y.

[fols. 716-717] PLAINTIFF'S EXHIBITS 7, 8 and 12

ADVERTISEMENT AND CIRCULAR; ADVERTISEMENT APPEARING IN
NEWSDAY AND NASSAU DAILY REVIEW-STAR ON MARCH 29,
1950

FRANKLIN NATIONAL'S CLASSIFIED DIRECTORY OF BANK SERVICES

When you open your checking or savings account at Franklin National, you take an important first step. But it is merely a first step. If you stop there, you stop too soon. This should just begin our usefulness to you!

To acquaint you with some of our other services, we submit the following "Classified Directory" with facts about certain avenues of helpfulness Franklin National maintains. If it's a money matter, come see us!

THRIFT ACCOUNTS

BE SURE, quick way to build your cash reserve—regular deposits in a Franklin National Interest-Paying Savings Account! A special welcome here for the folk. Save first—then Save—and have!

CHECKING ACCOUNTS

THE REGULAR KIND

FOR BUSINESS and personal use. Provides safety for funds, convenience in paying bills, receipts for all expenditures and a record of your expenses. All checks photographed for extra protection. Small service charge—or none at all—depending on balance maintained and number of checks written.

THE ECONOMY KIND

A BANKING bargain for you—10 checks for just \$2.00! No minimum balance required—Only 25¢ per month. Great for the occasional check user—thousands of salaried people, housewives, professional men and women, etc., enjoy Franklin National Economy Checking Accounts. Join them!

INVESTMENT INFORMATION

FRANKLIN NATIONAL maintains full information on all securities, including U. S. Government issues, and handles customers' orders for buying and selling. Stock and bond ratings by recognized agencies. You are invited to confer with us on investment matters.

TRADE DATA

STATISTICS and credit information, business trends and commercial data of all kinds, as supplied by the most authoritative sources, always available.

LOANS

PERSONAL LOANS

LOW bank rates and easy repayment by way of installments adapted to your income. You can borrow for any number of constructive purposes—educational expenses, medical or hospital bills, savings in cash purchases, insurance premiums, business opportunities and so on.

AUTO LOANS

ASK ABOUT our money-saving plan on new cars—the lowest cost you can find! Loans made on used cars too. See Franklin National FIRST!

MORTGAGE LOANS F.H.A. LOANS

FOR THE home builder or buyer—on regular bank or F.H.A. terms. Helpful cooperation here always.

SMALL BUSINESS LOANS

OUR BUSINESS is to help you and your business—and size doesn't matter. Franklin National always has a welcome for the small business man who is looking ahead—a welcome, and whatever financial assistance sound banking permits.

INSURANCE AND COLLATERAL LOANS

QUICKLY arranged on the basis of borrower's pledging life insurance, stocks, bonds or other assets.

HOME REPAIR LOANS

NEED a new Roof? Heating Plant? Garage? Other approved improvements? The place to borrow, if you need money, is where you'll get reasonable rates and friendly service—Franklin National!

COMMERCIAL LOANS

LONG or short term lines of credit for business and industry. When you'd like to discuss financial accommodations in an atmosphere of cordiality and understanding, drop in for a talk with one of our officers.

BANK MONEY ORDERS

A SAFE and inexpensive way to send money. Quickly issued—and we believe you'll be surprised how very small the cost!

BANK-BY-MAIL SERVICE

YOU ARE always near a mail box—and our special envelopes and forms make it easy to "bank by mail". If it is not convenient to visit one of our offices, enjoy this service.

SAFE DEPOSIT BOXES

and BULK STORAGE. The safe place for all kinds of valuable papers, gems, silver, heirlooms and the like. Easily accessible—on our main floor. Positive protection against loss from fire, theft and negligence. Boxes as low as \$5.00 a year.

U.S. SAVINGS BONDS ISSUED - REDEEMED

GOVERNMENT Savings Bonds issued to you "on-the-spot". We redeem them, too, when circumstances compel redemption, but we strongly advise holding until maturity.

NIGHT DEPOSITORY

A VALUABLE convenience to business houses. Available not only at our main office, but also at our Elmont office.

REMITTANCES AND COLLECTIONS

NEW YORK exchange, cashiers checks, etc., for transmitting funds. Far-flung banking connections—state, national, foreign—for collections. To many correspondents, we route items direct. Service can be no faster on out-of-town collections!

TRAVELERS CHECKS

AT TRIFLING cost, Travelers Checks assure the safety of your personal funds while you are away from home. Let us issue you yours before you start your next trip.

FOREIGN EXCHANGE

THE FAST, safe way for transfer of funds to other countries. Economical, too. Full information and rates cheerfully given on request.

FREE PARKING

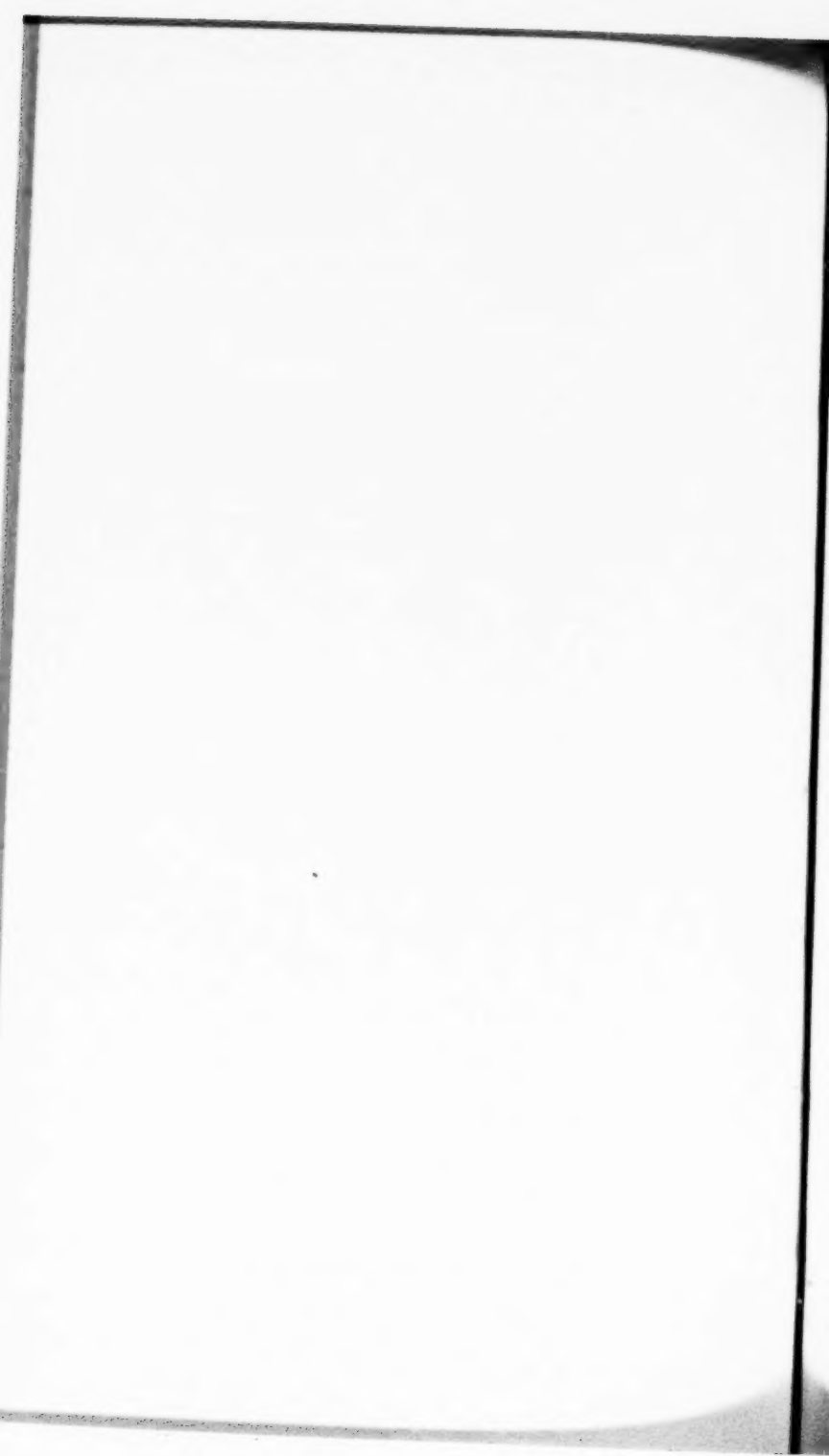
WHILE transacting your business in Franklin National. Paved parking place at rear of bank. A time and trouble saver for our customers.

2

**CONVENIENT
OFFICES**
Franklin Square
Elmont

Whatever your financial problem... SEE FRANKLIN NATIONAL FIRST





[fol. 718]

PLAINTIFF'S EXHIBIT 9A

Envelope

The Franklin National Bank
Levittown Center

2943 Hempstead Turnpike
Levittown, N. Y.

This Envelope Contains:

1. Savings Account—Signature Card and Deposit Ticket
2. Special Checking Account—Signature and Deposit Ticket
3. Children's Savings Account—Signature Card
4. Request Card—For Many Other Services

Watch Your Local Papers for the List of Gifts and Opening Date.

(Back Side of Envelope)

Save Time! Complete These Forms and Bring Them to
The Franklin National Bank With Your Deposit.

[fol. 719]

PLAINTIFF'S EXHIBIT 9B

Envelope

This Envelope Contains Forms For the Opening of a Savings Account.

Instructions:

Signature Card

1. If individual account
 - (a) Sign name and print address
 - (b) Complete information on reverse side of card
2. If joint account of husband and wife
 - (a) Both are to sign signature card
 - (b) Print address where indicated
 - (c) Complete information on reverse side of card
3. If trust account for son, daughter or other relative
 - (a) Depositor is to sign own name
 - (b) Print after signature, "In trust for (Name)..... (Relationship)"
 - (c) Print address and complete information on reverse side of card

Deposit Ticket

1. Print name or names exactly as account is to read
2. Fill in amount of cash and/or checks where indicated

(Back of Envelope)

The Franklin National Bank
2943 Hempstead Turnpike
Levittown, N. Y.

Save—Out of Income!

2% Interest is paid on all savings balances between \$100 and \$1000. 1½% on balances over \$1000.

[fol. 720]

PLAINTIFF'S EXHIBIT 9C

Envelope

This Envelope Contains Forms For the Opening of a
Children's Savings Account.

Instructions:

1. Print name, address and date of birth of child
2. Have child sign signature card. If unable, parent may sign child's name
3. Accounts may be opened for children up to 15 years of age
4. Deposits are acceptable only in even dollar amounts up to an aggregate of \$200

2% Interest on All Balances.

(Back Side of Envelope)

The Franklin National Bank


2943 Hempstead Turnpike
Levittown, N. Y.

A Lollypop With Every Deposit!

(Here follows 1 photograph, side folio 721.)

DEPOSIT SLIP

**DEPOSITED WITH
THE FRANKLIN NATIONAL BANK
OF LEVITTOWN, N. Y.
NAME OF ACCOUNT**

 BOOK NUMBER	
---	--

C

DATE _____

SAVINGS DEPARTMENT

	DOLLARS	CENTS
BILLS		
COIN		
CHECKS		
TOTAL \$		

In receiving items for deposit or collection, this Bank acts only as depositor's collecting agent and assumes no responsibility beyond the exercise of due care. All items are credited subject to final payment in cash or solvent credits. This Bank will not be liable for default or negligence of its duly selected correspondents nor for losses in transit, and each correspondent so selected shall not be liable except for its own negligence. This Bank or its correspondents may send items, directly or indirectly, to any bank including the payor, and accept its draft or credit as conditional payment in lieu of cash; it may charge back any item at any time before final payment, whether returned or not, also any item drawn on this Bank not good at close of business on day deposited.

[fol. 722]

PLAINTIFF'S EXHIBIT 9E

Card

C

Type Last Name First

Account Number

Savings Department

I/We hereby agree that this account when accepted shall be governed by the rules and regulations of The Franklin National Bank of Franklin Square, New York, relative to Savings Accounts, as contained in my/our pass-book. If there be more than one undersigned, each of us declare this account to be a joint account payable to either of us or to the survivor. Each of the undersigned does hereby authorize the other to endorse for deposit and to deposit in the said account checks and other instruments for the payment of money belonging to either or to both of us.

(1) Signature

(2) Signature

Address

Opened By.....Initial Deposit.....

Date

Description of Depositor (1)

Birth Place.....Date of Birth.....

OccupationHome Telephone.....

[fol. 723] Description of Depositor (2) or the Beneficiary
of a Trust

Birth Place.....Date of Birth.....

OccupationHome Telephone.....

Relationship of Beneficiary to Depositor (1)

Introduced by

(Identification)

PLAINTIFF'S EXHIBIT 9F

Children's Card

.....C

Type Last Name First

Account Number

Children's Savings Department

I hereby agree that this account when accepted shall be governed by the rules and regulations of The Franklin National Bank of Franklin Square, New York, relative to Children's Savings Accounts, as contained in my pass book.

Signature

Address

Date of Birth.....

Opened By.....Initial Deposit.....

Date

[fol. 724]

PLAINTIFF'S EXHIBIT 9G

Card

.....C

Type Last Name First

Account Number

Special Checking Department

I/We hereby agree that this account when accepted shall be governed by the rules and regulations of The Franklin National Bank of Franklin Square, New York, relative to Special Checking Accounts, as contained in my/our checkbook filler. If there be more than one undersigned, each of us declare this account to be a joint account payable to either of us or to the survivor. Each of the undersigned does hereby authorize the other to endorse for deposit and to deposit in the said account checks and other

instruments for the payment of money belonging to either
or to both of us.

Signature

Signature

Address

Opened by.....Initial Deposit.....

Date

Employed By

Business Address

Home Telephone.....Business Telephone.....

Bank Reference

.....

Other Reference

Introduced By

(Identification)

(Here follows 1 photograph, side folio 725.)

DEPOSIT SLIP

DEPOSITED WITH
THE FRANKLIN NATIONAL BANK
 OF LEVITTOWN, N. Y.

C

In receiving items for deposit or collection, this Bank acts only as depository's collecting agent and assumes no responsibility beyond the exercise of due care. All items are credited subject to final payment in cash or without credit. This Bank will not be liable for default or negligence of its duly selected correspondents nor for losses in transit, and each correspondent so selected shall not be liable except for its own negligence. This Bank or its correspondents may send items, directly or indirectly, to any bank including the payor, and accept its draft or credit on conditional payment in line of cash; it may charge back any item at any time before final payment, whether returned or not, also any item drawn on this Bank not good at close of business on day deposited.


	DOLLARS	CENTS
BILLS		
COIN		
CHECKS	LIST CHECKS BELOW	
(LIST SEPARATELY)		
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
TOTAL		

PLEASE ENDORSE ALL CHECKS

SPECIAL CHECKING DEPARTMENT

FOR ACCOUNT OF

C

 ACCOUNT NUMBER	
--	--

DATE _____

[fol. 726]

PLAINTIFF'S EXHIBIT 9I

Envelope

This Envelope Contains Forms For the Opening of a
Special Checking Account.

Instructions:

Signature Card

1. If individual account
 - (a) Sign name and print address
 - (b) Complete information on reverse side of card
2. If joint account of husband and wife
 - (a) Both are to sign signature card
 - (b) Print address where indicated
 - (c) Complete information on reverse side of card
 - (d) Checks may be signed by either

Deposit Ticket

1. Print name or names exactly as account is to read
2. Fill in amount of cash and/or checks where indicated

(Back Side of Envelope)

The Franklin National Bank

2943 Hempstead Turnpike
Levittown, N. Y.

No Minimum Balance Requirements.

Ten Cents Per Check—No Charge for Deposits.

[fol. 727]

PLAINTIFF'S EXHIBIT 9J

Business Reply Card

Postage Will be Paid by Addressee.

No Postage Stamp Necessary if Mailed in the United States.

Business Reply Card

The Franklin National Bank
Levittown Center2943 Hempstead Turnpike
Levittown, N. Y.

(Back of Card)

Please send me literature for the following:

(Personal)

- 1.
- ☐
- Opening a regular Checking Account.

(Business)

2. ☐ Renting a Safe Deposit Box (Special offer \$1.20 for first year—Regular charge \$6.00).
3. ☐ Application for an ☐ Application for a Mortgage Loan.
 Auto Loan. ☐ Application for a Business Loan.
 ☐ Application for a Personal Loan. ☐ Application for a Garage Loan.
 ☐ Application for a FHA Modernization Loan.

- 4.
- ☐
-

Name

Address

[fol. 728]

PLAINTIFF'S EXHIBIT 9K

Draft

We Will Transfer Your
Savings Account From
Another Bank.

1. Fill in the attached draft.
 2. Complete signature card in savings account envelope.
 3. Present draft, signature card and your passbook to
The Franklin National Bank,
Levittown, N. Y.
 4. Balance will be collected for you without charge and credited to your account with us.
- Note: to preserve your interest for the current period, date this draft July 1, 1950.

Patronize Your
Community Bank

.....19..
\$ Balance of Account with interest
At Sight—Pay to the order of
The Franklin National Bank
2943 Hempstead Turnpike
Levittown, N. Y.
the Balance of Account with interest to date
and charge to Account No.....,
Passbook attached.
To: Bank
.....
..... Signature
.....
..... Signature

[fol. 729]

PLAINTIFF'S EXHIBIT 10A

Envelope

Postage Will be Paid by Addressee.

No Postage Stamp Necessary if Mailed in the United States.

Business Reply Envelope

The Franklin Square National Bank

315 Hempstead Turnpike
Franklin Square, N. Y.

[fols 730-731] (Here follows 1 photograph, side folios
730-731.)

LETTER

the parade is on...



... to Long Island's favorite bank!

Thousands of forward-looking citizens consistently save at the Franklin Square National Bank--and with good reason! They know that the wisest investment today is a savings account. Not only are dividends earned now, but--by avoiding unnecessary buying at today's inflated prices--saved dollars will purchase more later on.

A savings account at Franklin Square offers you these special benefits as well!

Your savings account earns maximum dividends at Franklin Square. Accounts from \$100. to \$1,000. earn a full 2% interest--amounts over \$1,000. earn 1½%. New residents (and many old timers, too) find that it pays in dollars and cents--as well as in convenience--to bank at Franklin Square.

Many of our new depositors have recently bought homes in Nassau County and have asked us to transfer their accounts from banks in their former neighborhoods, to ours. We will be glad to do the same for you. The transaction is quite simple and can be handled entirely by mail--all it takes is your signature on one of our forms. What's more--if we arrange this transfer for you before July 10th--interest will be credited to your account from July 1st.

How can you take care of this? Just bring your passbook into the bank--sign a simple form--and we will take care of the rest. Or else, send us your passbook in the postpaid return envelope and we'll handle everything by mail.

As a "Special Incentive" for coming in or writing us before July 10th--and to further acquaint you with the advantages of banking at Franklin Square--you can enjoy protection of your valuables "Rent Free" for one year in Long Island's newest vault. A regular \$5.00 Safe Deposit Box will be assigned to you upon opening or transferring a Savings Account of \$100. or more.

Act now for the special advantages of having the interest on your account start July 1st and for securing the Safe Deposit "Special". Act now and enjoy the permanent advantages of Franklin Square's friendly and courteous service. Come in any weekday from 9 A. M. to 3 P. M. or on Friday evening from 6 to 8 P. M. Or, if you prefer, simply fill in and mail the enclosed form--using the postpaid return envelope. It will receive our prompt and careful attention.

Sincerely,

President

THE FRANKLIN SQUARE NATIONAL BANK
FRANKLIN SQUARE, LONG ISLAND

Member Federal Deposit Insurance Corporation

BLEED THROUGH

FOLLOWING FOLIO(S) IS/ARE

[fols. 732-733] PLAINTIFF'S EXHIBIT 10C

Application Slip

The Franklin Square National Bank
Franklin Square, Long Island, N. Y.

Date.....

Dear Mr. Roth:

I want to take advantage of *all* the special benefits of a Franklin Square Savings Account.

Please Check

- ☐ I would like to open a Franklin Square Savings Account. Send me necessary forms.
- ☐ I am enclosing \$. to open a Franklin Square Savings Account at once. Send me the necessary signature card.
- ☐ I would like to transfer my account to the Franklin Square National Bank. I am enclosing my pass book so that you can send me completed forms for my signature.
- ☐ Reserve my Safe Deposit Box (rent free for one year on any new or transferred account of \$100 or more).

Name Address

(please print)

[fol. 736]

PLAINTIFF'S EXHIBIT 13B

Withdrawal Slip

Franklin Square, N. Y.....195..

Received from The Franklin National Bank Savings
Department

\$.....

Amount Dollars

Charge to Account No.....

Signature

Savings Pass Books Must Be Presented With This Re-
ceipt.

PLAINTIFF'S EXHIBIT 14

"Dime Saver" Issued by Defendant-Respondent Bank
(Omitted pursuant to stipulation)

PLAINTIFF'S EXHIBIT 15A

April 16, 1947

Mr. Arthur T. Roth, President,
The Franklin Square National Bank,
Franklin Square, L. I., N. Y.

Dear Mr. Roth:

We refer to our letter of March 25 and subsequent correspondence and will be pleased to have your confirmation that the use of the word "savings" in advertising and other literature has been discontinued, in accordance with the requirements of an Attorney General's opinion of which we sent you a copy.

Very truly yours,

Deputy Superintendent of Banks.

chs:rs.

[fol. 737]

PLAINTIFF'S EXHIBIT 15B

April 3, 1947

Mr. Arthur T. Roth, President,
The Franklin Square National Bank,
Franklin Square, L. I., N. Y.

Dear Mr. Roth:

As requested in your letter of March 29, I am enclosing the opinion to which I referred in my letter of March 25. This has been given me by the Legal Division of this Department, which informs me that it is the basis of the position taken on the subject and is in full force and effect at this time.

Very truly yours,

Deputy Superintendent of Banks.

Encl, chs:rs.

PLAINTIFF'S EXHIBIT 15C

March 25, 1947

The Franklin Square National Bank,
Franklin Square, L. I., N. Y.
Attention: Mr. Arthur T. Roth, President

Gentlemen:

Our attention has been directed to advertisements which are understood to have appeared in the Long Island Press and in the Nassau Daily Review Star within the past two weeks, in which it is indicated that 2% interest on savings accounts between \$100 and \$1,000 will be paid. We last wrote you on this subject on May 29, 1945. Since an attorney-general of this state has given it as his opinion [fol. 738] that the use of the word "savings" by a national bank is a violation of law, we must request that your advertising and use of the word in other literature be discontinued.

We would appreciate your confirmation that steps have been taken to correct the circumstances.

Very truly yours,

Deputy Superintendent of Banks.

chs:rs.

PLAINTIFF'S EXHIBIT 16

Identification Card of Bank Examiner

Arthur R. Seaton

State of New York—Banking Department

Office of Superintendent of Banks

January 2, 1951

This is to Certify That Arthur R. Seaton, a duly appointed Examiner of this Department, is authorized to examine institutions, corporations and individuals which have been authorized, or have applied for permission to do business under the provisions of the Banking Law of the State of New York together with any corporations affiliated therewith; also to make special investigations of any individual, partnership, corporation or unincorporated association, for the determination of Banking Law violations.

This authority expires December 31, 1951.

William A. Lyon, Superintendent of Banks.

Arthur R. Seaton, Signature of Examiner.

6572

[fol. 739]

PLAINTIFF'S EXHIBIT 17

Name: Franklin National Bank

Examiner's Comments

April 10, 1950

Hon. William A. Lyon,
Superintendent of Banks,
Albany, N. Y.

Dear Sir:

Under instructions of Attorney J. F. Carlucci, the writer visited the Franklin National Bank, Franklin Square, L. I., N. Y. for the purpose of ascertaining whether this bank is using the word "Savings" in violation of Section 258 of the Banking Law.

The bank is separated into three distinct sections, the corner building contains the commercial accounts (main

floor) and the building next facing Franklin Square contains the "savings" accounts on the main floor, and in the back of this department you will find the installment loan department. In walking from the commercial banking floor to the savings department, you pass through a small opening about 5 feet wide, the first thing you see is a large glass sign about three feet long and one foot wide hanging from the ceiling saying "Savings"; in back of this large sign there are six tellers' windows five of which have glass signs saying "Savings' Christmas Club" and the sixth window has a sign saying "Children's Savings".

There is a large circular counter in the middle of the floor with a sign that says "New Accounts". The banking floor appears to be set up to look like the main floor of any modern savings bank.

There is a large sign over the tellers' window with the following advertisement.

[fol. 740] "2% interest on savings accounts between \$100 and \$1,000.

1½% on balances over \$1,000".

On March 29, 1950 this bank advertised that they had savings accounts in the following papers:

Newsday	page 36
Nassau Daily Review-Star.....	" 2
Long Island Daily Press.....	?

A copy of the Newsday and Nassau Daily Review-Star will be found attached to this report. I was unable to purchase the Long Island Daily Press at the office as there were none left, but I did see the same advertisement in the Press that appears in the other papers.

Attached to this report you will find a sample of the deposit and withdrawal slip used by this bank—also a coin saving card.

The large advertisement attached to this report was found on the various desks used by the depositors. This advertisement is the same one appearing in the newspapers reported above.

I did not approach any of the officers of this bank.

The Valley Stream National Bank and Trust Company, Valley Stream, N. Y. used the word "Savings" in its advertisement in the Nassau Daily Review-Star on March 31, 1950. The advertisement will be found on the last page of the newspaper attached to this report.

Respectfully submitted,

A. R. Seaton, Examiner.

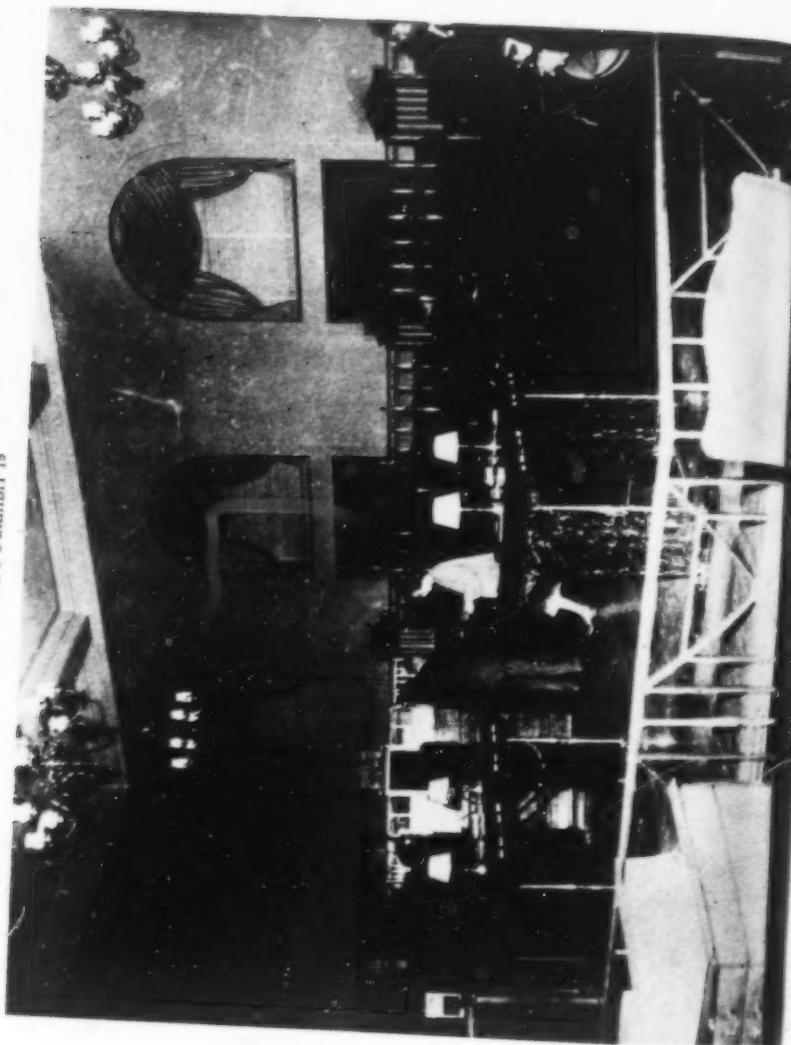
584

PLAINTIFF'S EXHIBIT 18

BLEED THROUGH



PLAINTIFF'S EXHIBIT 19



587

PLAINTIFF'S EXHIBIT 20



744-745

COPY 50112

PLAINTIFF'S EXHIBIT 21

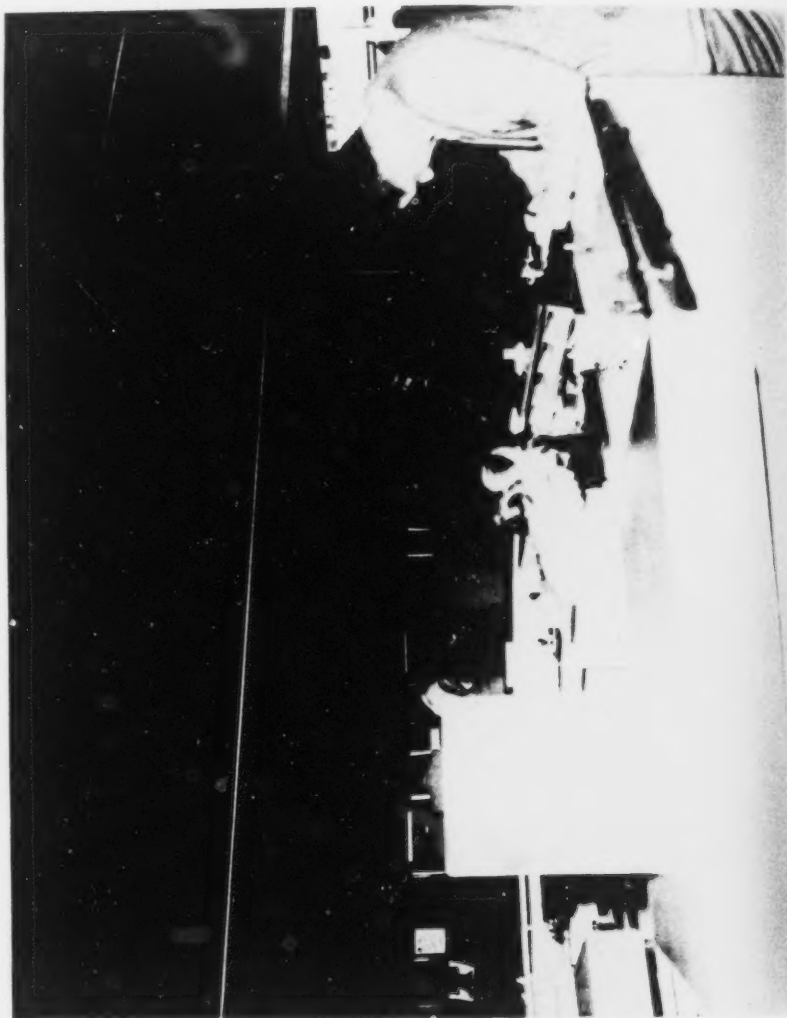




748=749

590

PLAINTIFF'S EXHIBIT 23



750-751

PLAINTIFF'S EXHIBIT 24



752-753

PLAINTIFF'S EXHIBIT 25

11



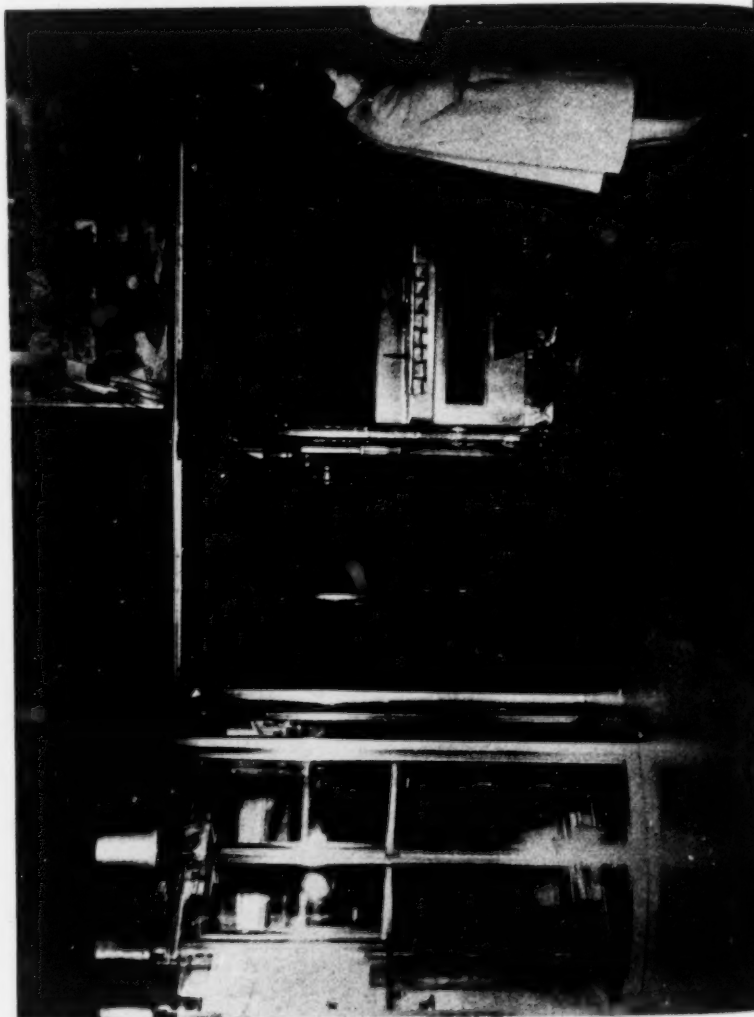
754-755

PLAINTIFF'S EXHIBIT 26



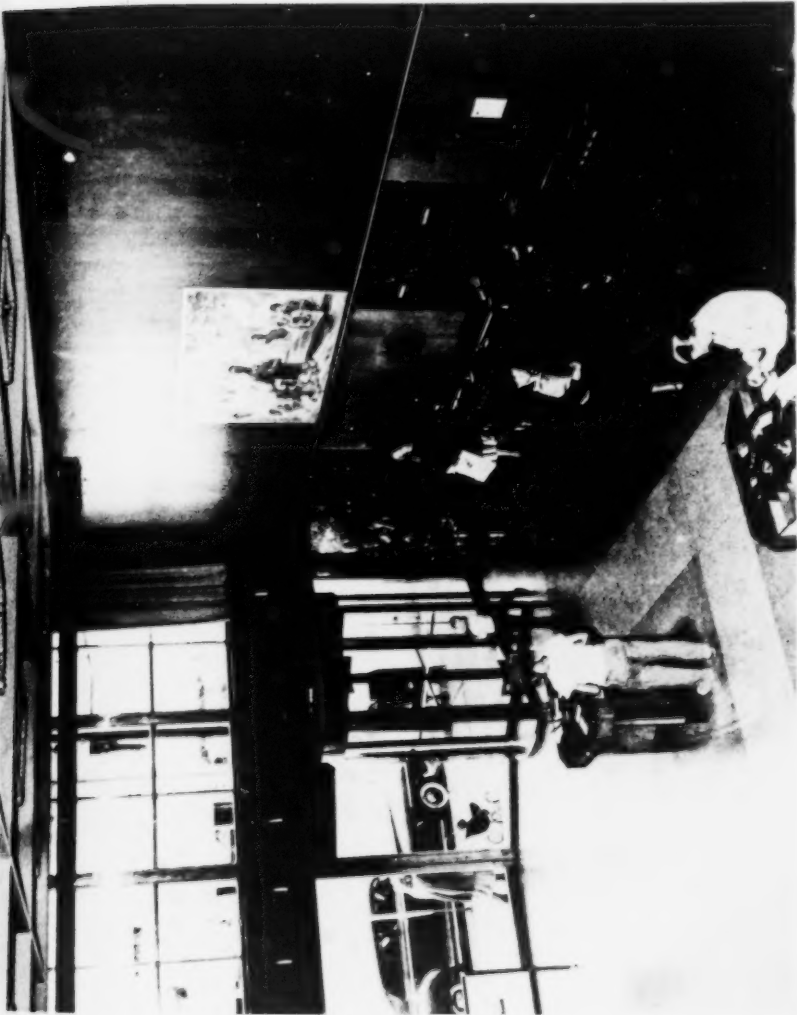
756-757

PLAINTIFF'S EXHIBIT 27



758-7

PLAINTIFF'S EXHIBIT 28



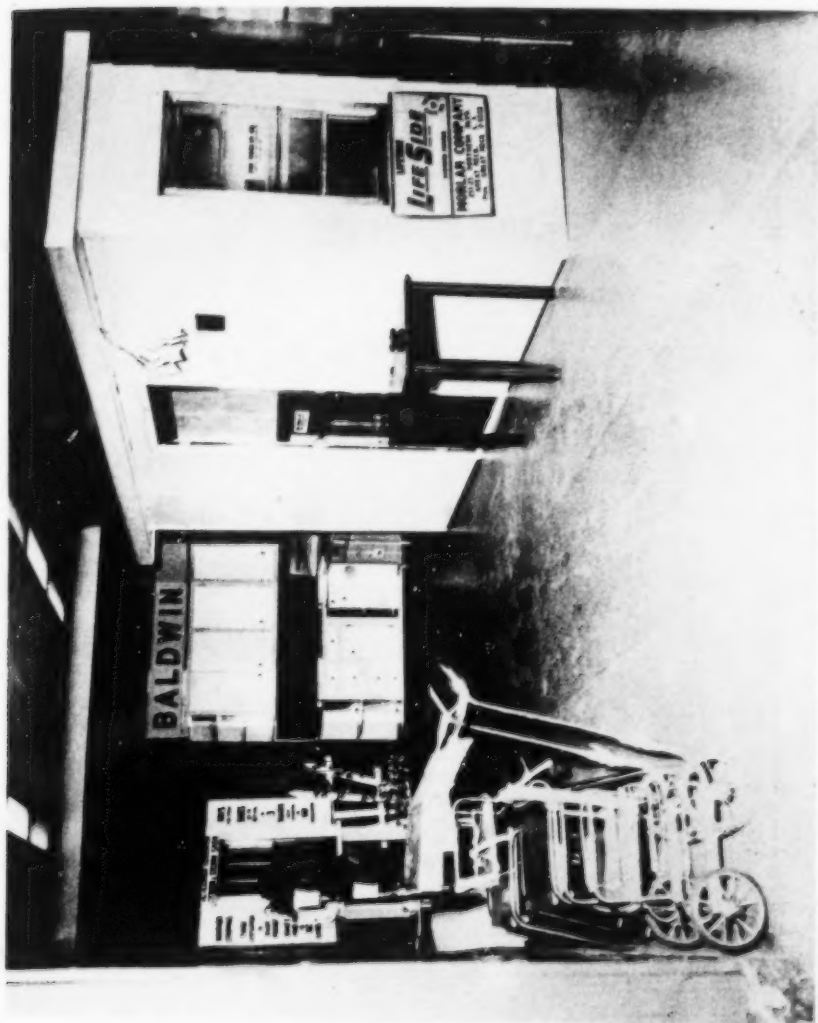
760=762

[fols. 763-764] PLAINTIFF'S EXHIBIT 29

(Omitted. Printed side pages 725 and 735 ante.)

(Here follow 3 photographs, side folios 765-766, 767, 768-769)

598A

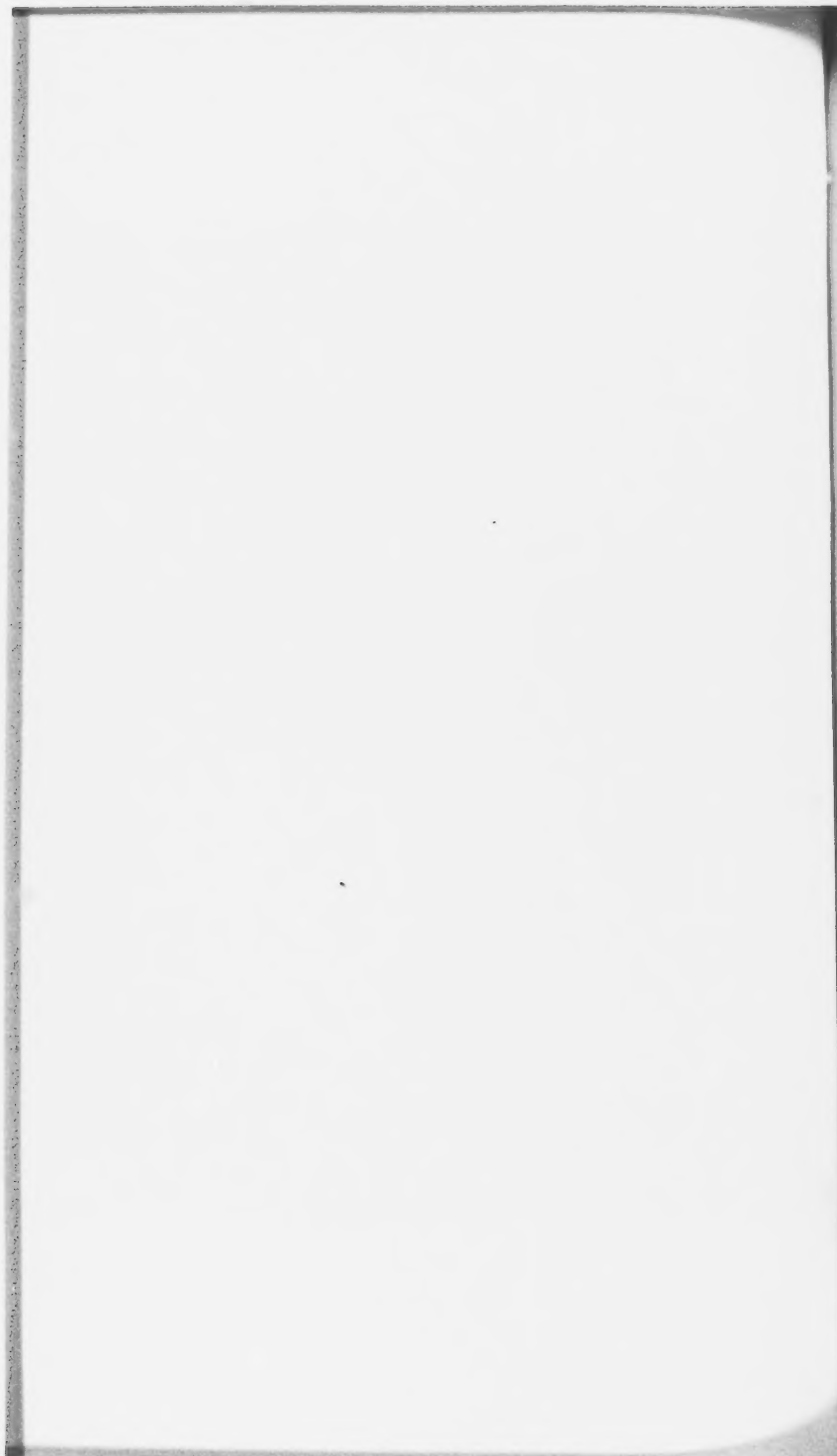


765=766

COPY BOUND VERTICALLY

5983





PHOTOGRAPH

Franklin Square, N. Y. 195

Received from **The Franklin National Bank**
OF FRANKLIN SQUARE
SAVINGS DEPARTMENT

AMOUNT \$ _____ DOLLARS

Charge to Account No. _____ SIGNATURE _____

SAVINGS PASS BOOK MUST BE PRESENTED WITH THIS RECEIPT

CH 710128

SAVE REGULARLY FOR A RAINY DAY

Open An Account In Our Special Interest Department

We Pay **2%** on balances from \$100. to \$1000. and 1% on balances above \$1000. No limit on deposits or withdrawals.

The Franklin National Bank

ELMONT FRANKLIN SQUARE LEVITTOWN

Member Federal Deposit Insurance Corporation

[fol. 770]

PLAINTIFF'S EXHIBIT 33

Certificate of State Superintendent of Banks

State of New York Banking Department
Albany, New York

I Hereby Certify that I am the Superintendent of Banks of the State of New York, and that, as such, I am duly authorized and charged by the provisions of Sections 11 and 12 of the Banking Law of the State of New York, as amended, with the execution, administration and enforcement of the laws relating to the individuals, partnerships and corporations doing a banking business in the State of New York, and to supervise and regulate such banking business, in accordance with the provisions of the Banking Law of the State of New York; that as such Superintendent of Banks I have the custody and control of all records concerning the administration of the Banking Law of the State of New York; that I have made diligent and complete search of such records and do not find that The Franklin National Bank of Franklin Square, having its principal place of business at Franklin Square, Nassau County, State of New York, was ever authorized or empowered by the State of New York to do a savings bank business and/or a savings and loan association business in the State of New York.

Witness my hand and the seal of the Banking Department of the State of New York, at the City of Albany, this 30th day of October, 1950.

William A. Lyon, Superintendent of Banks.

[fol. 771]

Certificate for Certified Copy

Treasury Department,

Office of Comptroller of the Currency, ss:

I, J. L. Robertson, Acting Comptroller of the Currency, do hereby certify that the document hereto attached is a true and complete photostatic copy of the certificate of J. W. McIntosh, Comptroller of the Currency, dated October 13, 1926, authorizing "The Franklin Square National Bank", (Charter No. 12997), Franklin Square, New York, to commence the business of banking.

In Testimony Whereof, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the Treasury Department, in the City of Washington and District of Columbia, this 3rd day of May, A. D. 1950.

J. L. Robertson, Acting Comptroller of the Currency
(Seal).

[fol. 772]

PLAINTIFF'S EXHIBIT 34

Certificate of Comptroller of the Currency

No. 12997

Treasury Department

Office of Comptroller of the Currency

Washington, D. C., October 13, 1926.

Whereas, by satisfactory evidence presented to the undersigned, it has been made to appear that "The Franklin Square National Bank" in the Village of Franklin Square in the County of Nassau and State of New York has complied with all the provisions of the Statutes of United States, required to be complied with before an association shall be authorized to commence the business of Banking;

Now, therefore, I, J. W. McIntosh, Comptroller of the Currency, do hereby certify that "The Franklin Square National Bank" in the Village of Franklin Square in the County of Nassau and State of New York is authorized to commence the business of Banking as provided in Section Fifty-one hundred and sixty-nine of the Revised Statutes of the United States.

In witness whereof, witness my hand and seal of office this Thirteenth day of October, 1926.

J. W. McIntosh, Comptroller of the Currency.

[fol. 773]

PLAINTIFF'S EXHIBIT 35.

Certificate of Change of Name

Certificate for Certified Copy

Treasury Department,

Office of Comptroller of the Currency, ss:

I, J. L. Robertson, Acting Comptroller of the Currency, do hereby certify that the document hereto attached is a true and complete photostatic copy of the Certificate of J. L. Robertson, Acting Comptroller of the Currency, dated August 10, 1949, authorizing a change in title of "The Franklin Square National Bank", Franklin Square, New York, (Charter No. 12997), to "The Franklin National Bank of Franklin Square", effective August 15, 1949.

In testimony whereof, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the Treasury Department, in the City of Washington and District of Columbia, this 3rd day of May, A. D. 1950.

J. L. Robertson, Acting Comptroller of the Currency
(Seal).

[fol. 774] Certificate of Change of Corporate Title

No. 12997.

Treasury Department

Office of the Comptroller of the Currency

Washington, D. C., August 10, 1949.

Whereas, satisfactory notice has been transmitted to the Comptroller of the Currency to the effect that all requisite legal and corporate action has been taken by "The Franklin Square National Bank," Franklin Square, New York, in accordance with the applicable provisions of the banking laws of the United States, to authorize a change of the title of that Association to "The Franklin National Bank of Franklin Square,"

Now, therefore, it is hereby certified, That such change of title is hereby authorized, to be effective August 15, 1949.

J. L. Robertson, Acting Comptroller of the Currency.

(Here follows 3 photographs, side folios 775, 775A, 776-
777)

RESOURCES

	December 31, 1950	December 31, 1949
Cash on Hand and in Banks.....	\$ 8,363,423.62	\$ 6,108,731.45
U. S. Government Securities.....	25,869,156.40	14,179,700.00
Municipal Bonds and Other Securities.....	7,320,311.69	1,852,000.00
Loans to Business—Individuals.....	25,548,321.64	10,959,683.78
Mortgages to Business—Individuals	9,955,562.04	11,576,581.17
Bank Buildings and Equipment.....	922,316.14	685,722.52
Other Assets.....	384,070.36	220,865.11
TOTAL	\$78,563,961.69	\$44,784,184.01

DEPOSITS, CAPITAL AND RESERVES

Deposits.....	\$71,526,594.44*	\$41,050,980.78
Capital Stock.....	1,750,000.00	850,000.00
Surplus.....	3,000,000.00	1,800,000.00
Undivided Profits.....	772,898.49	215,185.74
Total Capital Funds	\$ 5,022,898.49	\$ 2,865,747.83
Provisions for Loans on Loans.....	700,000.00	506,626.80
Provisions for Taxes and Interest.....	1,115,468.76	401,190.69
TOTAL	\$78,563,961.69	\$44,784,184.01

*Excludes deposits of South Shore Office totaling \$16,020,215.66

RECORD OF GROWTH

	Dec. 31, 1933	Dec. 31, 1937	Dec. 31, 1939	Dec. 31, 1949	Dec. 31, 1950
Deposits	\$ 490,264.40	942,857.00	1,456,648.37	5,071,865.61	9,955,562.04
Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 5,071,865.61	\$ 9,955,562.04

Capital Surplus	—	—	—	—	—
Undivided Profits	—	—	—	—	—
TOTAL	\$ 490,264.40	\$ 942,857.00	\$ 1,456,648.37	\$ 2,045,389.74	\$ 2,045,389.74

Many More Ways to Serve You

60211

Financial Statement

December 31, 1950

OFFICERS

ARTHUR T. ROTH	<i>President</i>
PAUL E. PROSSWIMMER	<i>Executive Vice-President</i>
GEORGE H. BECHT	<i>Cashier</i>
WILLIAM J. BOYLE	<i>Vice-President</i>
P. J. CLIFFORD	<i>Vice-President</i>
C. W. GREEN	<i>Vice-President</i>
LEO LAIBACH	<i>Vice-President</i>
ALBERT A. SACCO	<i>Assistant Vice-President</i>
JOHN ENGLE	<i>Assistant Cashier</i>
WILLIAM CONROY	<i>Assistant Cashier</i>
RICHARD M. DOWLING	<i>Assistant Cashier</i>
CHARLES H. MOUNT	<i>Assistant Cashier</i>
WILLIAM P. NAGLE	<i>Assistant Cashier</i>
WILLIAM H. CLINE, Jr.	<i>Mortgage Officer</i>
JAMES G. SMITH	<i>Mortgage Officer</i>
MILDEED TEED	<i>Assistant Mortgage Officer</i>
JAMES S. BOSHAET	<i>Assistant Mortgage Officer</i>
J. MEADE SMITH	<i>Assistant Mortgage Officer</i>

South Shore Office

FRANK W. BREITBACH	<i>Vice-President</i>
ADRIEN R. MOISSON	<i>Assistant Vice-President</i>
JOSEPH J. WILLIAMS	<i>Assistant Cashier</i>

Elmont Office

ROBERT T. CORRELL	<i>Manager</i>
LEWISTOWN Office	
BENJAMIN F. DOWNING	<i>Manager</i>
MORTGAGE Counsel	
ANDREW L. MAGIONCALDA	

DIRECTORS

ARTHUR C. PHILLIPS	<i>Chairman</i>
FRANK W. BREITBACH	
HERBERT MISCHER	
PAUL E. PROSSWIMMER	
ARTHUR T. ROTH	
LEO LAIBACH	
EDWIN M. KATZ	

The Franklin National Bank

ELMONT • FRANKLIN SQUARE • LEVITTOWN
ROCKVILLE CENTRE

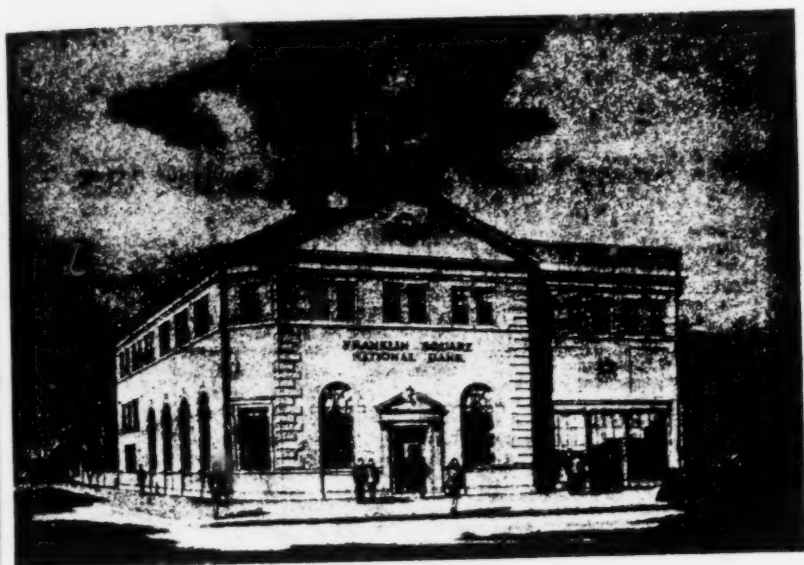
Accounts Receivable Loans	Investment Advisory Service
Apartment House Loans	Letters of Introduction
Automobile Loans	Life Insurance Loans
Bank Money Orders	Lines of Credit
Banking by Mail	Livestock Loans
Bill Paying Service	Mail Letters of Credit
Bills of Lading	Medical Loans
Bond Coupon Collection	Modernization Loans
Bus Financing	Mortgage Servicing
Business Auto Library	Municipal Financing
Business Assistance	Night Depository
Business Mortgage Loans	Note Collection
Cashier's Checks	Packaged Silver Storage
Certificates of Deposit	Pay Roll Servicing
Certified Checks	Personal Loans
Children's Bank	Property Improvement Loans
Christmas Club	Real Estate Mortgage Loans
Commercial Boat Loans	Recordak Facilities
Commercial Loans	Redemption Service
Commodity Loans	Regular Checking Accounts
Construction Loans	Remittances—Foreign Funds
Correspondent Bank Facilities	Repair Loans
Credit Information	Sale Deposit Boxes
Customers Conference Rooms	Savings Bonds
Customers Parking	School Thrift Program
Debit-Payment Loans	Securities Custody
Depository of Court Funds	Small Business Loans
Depository of School and County Funds	Social Security Depository
Discount Trade Notes	Receipts
Dividend Disbursing Agent	Statistical Information
Draft Collection	Stock Drafts
Educational Loans	Stock Purchase and Sales
Equipment Loans	Store Modernization Loans
Exchange Agent	Summer Bungalow Loans
Exchange Foreign Money	Tax Payment Loans
Farm Information	Term Loans
FHA Mortgage Loans	Thrift Accounts
Financial Advice	Time Sales Loans
Garage Loans	Tractor Loans
Gifts	Trailer Loans
G. I. Business Loans	Transfer of Foreign Funds
G. I. Farm Loans	Travelers Checks
G. I. Home Loans	Truck Financing
Gift Checks	Utility Bill Service
Guarantee Signatures	Valuable Storage
Household Expenses Account	Wholesale Financing
Household Expenses Account	Wholesale Financing

BLEED THROUGH

602C

[fols. 776-777] DEFENDANT'S EXHIBIT A

Preliminary architect's drawing showing bank building and proposed new wing.



When it is possible to undertake commercial construction, the bank building will be expanded by the additions of a new wing and an entire new upper floor ... with the resultant appearance indicated by the above architect's drawing.

776=777

[fol. 778]

DEFENDANT'S EXHIBIT B

Architect's drawing showing layout of westerly addition to bank.

(Omitted pursuant to stipulation)

Brochure distributed by the defendant showing sketches of various portions of the bank and facilities offered to the public.

Dedicated to You

[fol. 780]

DEFENDANT'S EXHIBIT D

Form of questionnaire used in connection with poll survey.

(Omitted pursuant to stipulation)

DEFENDANT'S EXHIBIT E

Form of questionnaire used in connection with poll survey.

(Omitted pursuant to stipulation)

DEFENDANT'S EXHIBIT F

Form of questionnaire used in connection with poll survey.

(Omitted pursuant to stipulation)

DEFENDANT'S EXHIBIT G

Form of questionnaire used in connection with poll survey.

[fol. 781]

DEFENDANT'S EXHIBIT H

Report of Bureau of Census, U. S. Department of Commerce, showing census figures for Nassau and other counties located in the State of New York.

(Omitted pursuant to stipulation)

DEFENDANT'S EXHIBIT I

Aerial survey of Glen Cove.

(Omitted pursuant to stipulation)

DEFENDANT'S EXHIBIT J

Aerial survey of Levittown.

(Omitted pursuant to stipulation)

DEFENDANT'S EXHIBIT K

Map showing location of clusters in Nassau County.

(Omitted pursuant to stipulation)

[fol. 782]

DEFENDANT'S EXHIBIT L

Street and road map of Nassau County.

(Omitted pursuant to stipulation)

DEFENDANT'S EXHIBIT M

Tippett's random sample numbers—Table V, VI, XVII and XVIII.

(Omitted pursuant to stipulation)

DEFENDANT'S EXHIBIT N

Tippett's table of random sampling numbers.

(Omitted pursuant to stipulation)

DEFENDANT'S EXHIBIT O

Array sheets—urban population (adding machine tape).

(Omitted pursuant to stipulation)

[fol. 783]

DEFENDANT'S EXHIBIT P

List of clusters for Glen Cove.

(Omitted pursuant to stipulation)

DEFENDANT'S EXHIBIT Q

Pre-listing sheets for Cluster No. 15.

(Omitted pursuant to stipulation)

DEFENDANT'S EXHIBIT R

Array sheet for unincorporated areas.

(Omitted pursuant to stipulation)

(Here follow 2 photographs, side folios 784-785, 785a)

624A

[fols. 784-785] DEFENDANT'S EXHIBIT S

First two pages of facing sheets attached to questionnaire.

City _____ Location # _____

Street address _____

Apartment number (identification) _____

We are making a survey for the Psychological Workshop at Hofstra College. Would you kindly tell me how many persons there are in your family 21 years of age and over _____

List all adults in household

First call				2nd call				3rd call				4th call				5th call			
I	N	R		I	N	R		I	N	R		I	N	R		I	N	R	

1																			
2																			
3																			
4																			
5																			
6																			
7																			
8																			
9																			
10																			
No one at home																			
Refused at door																			

List each adult (21 and over) on a separate line. List the men of the house first. Then the lady of the house. Then list all other Males in the order of age from oldest to youngest. Then list all other females in the order of age from oldest to youngest.

624B

The Psychological Workshop
Hofstra College

We are making a survey of some of the services offered and advertised by financial institutions. By financial institutions we mean banks of all types and savings and loan associations.

1. Will you please describe what each of the following services is?

Service	Description of service
Checking account	Don't know _____
Compound interest account	Don't know _____
Thrift account	Don't know _____
Savings account	Don't know _____
Special interest account	Don't know _____

2. Will you please state what kind or kinds of financial institutions offer each of these services. By financial institutions we mean banks of all types and savings and loan associations.

Service	Bank offering
Checking account	Don't know _____
Compound interest account	Don't know _____
Thrift account	Don't know _____
Savings account	Don't know _____
Special interest account	Don't know _____

3. When you want to deposit money to earn interest, which of these accounts do you prefer to open?

Account preferred _____

3a. In what type of financial institution do you prefer to open such an account?

Institution preferred _____

Name _____

Sex

Male _____

Female _____

Approx. Age

Address _____

Date _____

Interviewers
signature _____

[fol. 786] DEFENDANT'S EXHIBIT T

928 questionnaires.

(Omitted pursuant to stipulation)

DEFENDANT'S EXHIBIT U

22 sets of pre-listing sheets.

(Omitted pursuant to stipulation)

DEFENDANT'S EXHIBIT V

Computations showing Federal and State income taxes.

(Omitted pursuant to stipulation)

DEFENDANT'S EXHIBIT W FOR IDENTIFICATION

Regulation Q of the Federal Reserve Bank of New York.

(Omitted pursuant to stipulation)

[fol. 787] DEFENDANT'S EXHIBIT X FOR IDENTIFICATION

Regulation D of the Board of Governors of the Federal Reserve System.

(Omitted pursuant to stipulation)

DEFENDANT'S EXHIBIT Y

U. S. Savings Bond poster.

(Omitted pursuant to stipulation)

DEFENDANT'S EXHIBIT Z

Calculation sheets of Professor Brumbach (22 pages).
(Omitted pursuant to stipulation.)

DEFENDANT'S EXHIBIT AA

The definitions used in connection with the Hofstra Survey.
(Omitted pursuant to stipulation.)

DEFENDANT'S EXHIBIT BB

Classified response lists.
(Omitted pursuant to stipulation.)

[fol. 788]

DEFENDANT'S EXHIBIT CC

Table I

Description of Accounts
Total—Men and Women

We are making a survey of some of the services offered and advertised by financial institutions. By financial institutions we mean banks of all types and savings and loan associations.

1. Will you please describe what each of the following services is.

	Savings Account	Compound Interest Account	Special Interest Account	Thrift Account
	%	%	%	%
Persons saying "I don't know"	7.2	53.3	62.7	52.7
Persons making inaccurate statements .	2.9	5.4	14.1	25.1
Persons making indefinite statements . .	4.1	0.5	1.8	2.7
Persons making accurate statements . . .	85.8	34.2	14.5	7.8
Persons saying "It is the same as a sav- ings account"	—	6.6	6.9	11.7
	100.0	100.0	100.0	100.0
Number answering	927	925	924	927

[fol. 789]

Table II
Description of Accounts
Total—Men

We are making a survey of some of the services offered and advertised by financial institutions. By financial institutions we mean banks of all types and savings and loan associations.

1. Will you please describe what each of the following services is.

	Savings Account %	Compound Interest Account %	Special Interest Account %	Thrift Account %
Men saying "I don't know".....	5.7	40.2	52.7	42.8
Men making inaccurate statements....	4.4	6.0	18.7	32.6
Men making indefinite statements....	4.6	0.5	1.7	2.2
Men making accurate statements....	85.3	44.3	18.2	8.9
Men saying "It is the same as a savings account".....	—	9.0	8.7	13.5
	100.0	100.0	100.0	100.0
Number answering.....	406	403	402	406

[fol. 790]

Table III
Description of Accounts
Total—Women

We are making a survey of some of the services offered and advertised by financial institutions. By financial institutions we mean banks of all types and savings and loan associations.

1. Will you please describe what each of the following services is.

	Savings Account %	Compound Interest Account %	Special Interest Account %	Thrift Account %
Women saying "I don't know".....	8.3	63.6	70.3	60.6
Women making inaccurate statements..	1.7	5.0	10.5	19.0
Women making indefinite statements...	3.5	0.6	1.9	3.1
Women making accurate statements...	86.5	26.0	11.7	6.9
Women saying "It is the same as a sav- ings account".....	—	4.8	5.6	10.4
	100.0	100.0	100.0	100.0
Number answering.....	521	522	522	520

[fol. 791]

Table IV

Description of Accounts
Total—Men and Women *
Age 21-29

We are making a survey of some of the services offered and advertised by financial institutions. By financial institutions we mean banks of all types and savings and loan associations.

1. Will you please describe what each of the following services is.

	Savings Account %	Compound Interest Account %	Special Interest Account %	Thrift Account %
Persons saying "I don't know"	1.7	57.5	70.9	57.5
Persons making inaccurate statements	3.8	5.6	7.8	21.3
Persons making indefinite statements	3.4	0.6	2.8	3.9
Persons making accurate statements	91.1	32.9	13.5	9.5
Persons saying "It is the same as a savings account"	—	3.4	5.0	7.8
	100.0	100.0	100.0	100.0
Number answering	179			

* No age data obtained for 12 respondents.

[fol. 792]

Table V

Description of Accounts
Total—Men and Women
Age 30-44

We are making a survey of some of the services offered and advertised by financial institutions. By financial institutions we mean banks of all types and savings and loan associations.

1. Will you please describe what each of the following services is.

	Savings Account %	Compound Interest Account %	Special Interest Account %	Thrift Account %
Persons saying "I don't know"	6.1	53.1	62.5	50.1
Persons making inaccurate statements . .	1.5	5.5	13.8	27.6
Persons making indefinite statements . .	3.4	0.8	1.5	1.5
Persons making accurate statements . . .	89.0	33.6	13.9	8.0
Persons saying "It is the same as a sav- ings account"	—	7.0	8.3	12.8
	100.0	100.0	100.0	100.0
Number answering	398			

[fol. 793]

Table VI

Description of Accounts
Total—Men and Women
Age 45 and Over

We are making a survey of some of the services offered and advertised by financial institutions. By financial institutions we mean banks of all types and savings and loan associations.

1. Will you please describe what each of the following services is.

	Savings Account %	Compound Interest Account %	Special Interest Account %	Thrift Account %
Persons saying "I don't know"	10.9	52.2	58.5	54.1
Persons making inaccurate statements . .	3.9	5.4	17.5	22.8
Persons making indefinite statements . .	5.9	—	1.8	3.6
Persons making accurate statements . . .	79.3	35.6	15.7	6.8
Persons saying "It is the same as a sav- ings account"	—	6.8	6.5	12.7
	100.0	100.0	100.0	100.0
Number answering	338			

[fol. 794]

Table VII

Financial Institutions Said to Offer Accounts
Total—Men and Women

2. Will you please state what kind or kinds of financial institutions offer each of these services. By financial insti-

tutions we mean banks of all types and savings and loan associations.

	Savings Account %	Compound Interest Account %	Special Interest Account %	Thrift Account %
Savings Bank.....	51.3	24.1	16.7	26.7
Any or All Banks.....	17.7	8.0	9.7	8.5
Commercial Banks.....	3.6	5.3	7.9	4.8
Business Bank.....	0.7	3.0	3.9	1.1
Regular Bank.....	1.1	0.5	0.4	0.4
Ordinary Bank.....	0.4	0.1	—	0.2
General Bank.....	0.1	—	0.3	0.1
National Bank.....	7.0	5.1	6.1	4.3
Federal Bank.....	3.4	2.8	3.2	1.4
Local Bank.....	1.4	0.8	1.1	1.2
Savings and Loan Assn.....	4.5	2.8	3.4	2.6
Trust.....	4.2	2.7	3.7	2.2
Miscellaneous.....	6.1	3.5	4.7	5.9
Don't Know.....	10.5	48.2	46.0	50.1
	112.0	106.9	107.1	109.5
Number answering.....	927	925	924	927

[fol. 795]

Table VIII

Financial Institutions Said to Offer Accounts
Total—Men

2. Will you please state what kind or kinds of financial institutions offer each of these services. By financial institutions we mean banks of all types and savings and loan associations.

	Savings Account %	Compound Interest Account %	Special Interest Account %	Thrift Account %
Savings Bank.....	52.3	29.2	17.1	26.7
Any or All Banks.....	19.3	7.8	11.1	8.5
Commercial Banks.....	4.2	6.3	10.6	4.8
Business Bank.....	0.7	2.3	3.3	1.1
Regular Bank.....	1.0	0.5	0.3	0.4
Ordinary Bank.....	0.7	0.3	—	0.2
General Bank.....	0.2	—	0.3	0.1
National Bank.....	6.2	6.5	6.5	4.3
Federal Bank.....	2.2	1.7	2.3	1.4
Local Bank.....	1.0	0.3	1.3	1.2
Savings and Loan Assn.....	4.0	2.8	3.3	2.6
Trust.....	3.0	2.8	4.3	2.2
Miscellaneous.....	2.7	2.8	4.8	5.9
Don't Know.....	6.2	38.1	38.3	50.1
	103.7	101.4	103.5	105.2
Number answering.....	406	403	402	406

[fol. 796]

Table IX

Financial Institutions Said to Offer Accounts
Total—Women

2. Will you please state what kind or kinds of financial institutions offer each of these services. By financial institutions we mean banks of all types and savings and loan associations.

	Savings Account %	Compound Interest Account %	Special Interest Account %	Thrift Account %
Savings Bank.....	50.5	19.9	16.4	26.6
Any or All Banks.....	16.5	8.1	8.7	7.5
Commercial Bank.....	3.1	4.4	5.0	3.4
Business Bank.....	0.6	3.4	4.4	0.9
Regular Bank.....	1.2	0.6	0.6	0.6
Ordinary Bank.....	0.2	—	—	—
General Bank.....	—	—	0.4	—
National Bank.....	7.6	4.0	5.8	4.1
Federal Bank.....	4.3	3.6	3.8	1.7
Local Bank.....	1.8	1.1	1.0	1.1
Savings and Loan Assn.....	4.9	2.9	3.5	2.4
Trust.....	5.1	2.7	3.3	1.9
Miscellaneous.....	8.8	4.0	4.6	6.7
Don't Know.....	13.0	55.2	51.7	55.5
	<hr/> 117.6	<hr/> 109.9	<hr/> 109.2	<hr/> 112.4
Number answering.....	521	522	522	521

[fol. 797]

Table X

Financial Institutions Said to Offer Accounts
Total—Men and Women
Age 21-28

2. Will you please state what kind or kinds of financial institutions offer each of these services. By financial institutions we mean banks of all types and savings and loan associations.

	Savings Account %	Compound Interest Account %	Special Interest Account %	Thrift Account %
Savings Bank.....	48.4	18.9	16.8	25.1
Any or All Banks.....	24.6	9.5	10.1	7.8
Commercial Bank.....	2.8	4.5	6.2	0.6
Business Bank.....	0.6	3.9	3.4	1.1
Regular Bank.....	—	0.6	—	—
Ordinary Bank.....	—	0.6	—	0.6
General Bank.....	—	—	—	—
National Bank.....	3.9	5.6	4.5	1.7
Federal Bank.....	4.5	1.7	2.8	1.7
Local Bank.....	1.1	0.6	1.1	0.6
Savings and Loan Assn.....	4.5	4.5	4.5	2.8
Trust.....	3.4	2.8	3.4	1.1
Miscellaneous.....	5.6	3.9	5.0	5.6
Don't Know.....	7.8	47.5	47.5	52.5
	107.2	104.6	105.3	101.2
Number answering.....	179			

[fol. 798]

Table XI

Financial Institutions Said to Offer Accounts
Total—Men and Women
Age 30-44

2. Will you please state what kind or kinds of financial institutions offer each of these services. By financial institutions we mean banks of all types and savings and loan associations.

	Savings Account %	Compound Interest Account %	Special Interest Account %	Thrift Account %
Savings Bank.....	53.7	25.1	17.3	26.3
Any or All Banks.....	19.3	6.8	5.3	9.5
Commercial Bank.....	3.3	6.8	7.8	4.5
Business Bank.....	0.3	3.5	4.0	1.0
Regular Bank.....	1.8	1.8	0.8	0.5
Ordinary Bank.....	0.5	—	—	—
General Bank.....	—	—	—	—
National Bank.....	6.8	6.0	5.5	5.3
Federal Bank.....	3.5	4.3	3.5	1.5
Local Bank.....	1.5	0.8	1.5	1.5
Savings and Loan Assn.....	4.3	2.5	3.0	1.5
Trust.....	4.8	3.3	5.3	2.5
Miscellaneous.....	5.3	2.3	3.0	4.8
Don't Know.....	8.3	44.9	43.1	45.1
	114.9	104.0	100.1	107.1
Number answering.....	398			

[fol. 799]

Table XII

Financial Institutions Said to Offer Accounts
Total—Men and Women
Age 45 and Over

2. Will you please state what kind or kinds of financial institutions offer each of these services. By financial institutions we mean banks of all types and savings and loan associations.

	Savings Account %	Compound Interest Account %	Special Interest Account %	Thrift Account %
Savings Bank.....	50.0	25.5	15.9	27.5
Any or All Banks.....	12.1	8.6	8.6	7.7
Commercial Bank.....	4.4	3.9	7.7	7.4
Business Bank.....	1.2	1.8	4.1	1.2
Regular Bank.....	0.9	0.3	0.3	0.6
Ordinary Bank.....	0.6	0.3	—	—
General Bank.....	0.3	—	0.9	0.3
National Bank.....	8.9	4.2	7.7	4.4
Federal Bank.....	2.7	1.8	2.9	0.9
Local Bank.....	1.5	0.9	0.9	1.2
Savings and Loan Assn.....	5.0	2.4	3.3	3.9
Trust.....	3.9	2.1	2.1	2.4
Miscellaneous.....	7.4	4.7	6.5	7.4
Don't Know.....	13.3	54.8	48.5	52.1
	112.2	108.3	109.4	120.0
Number answering.....	338			

[fol. 800]

Table XIII

Account Preferred
Total—Men and Women

3. When you want to deposit money to earn interest, which of these accounts do you prefer to open?

Account	Percent
	Naming Each Account %
Savings Account	57.7
Compound Interest Account	21.9
Special Interest Account	10.7
Thrift Account	1.2
Checking Account	0.6
Don't Know	6.8
Miscellaneous	1.1
	<hr/>
	100.0
Number answering	927

[fol. 801]

Table XIV

Account Preferred
Total—Men

3. When you want to deposit money to earn interest, which of these accounts do you prefer to open?

Account	Percent
	Naming Each Account %
Savings Account	55.3
Compound Interest Account	29.4
Special Interest Account	8.7
Thrift Account	0.8
Checking Account	0.8
Don't Know	3.7
Miscellaneous	1.3
	<hr/>
	100.0
Number answering	406

[fol. 802]

Table XV
Account Preferred
Total—Women

3. When you want to deposit money to earn interest,
which of these accounts do you prefer to open?

Account	Percent Naming Each Account %
Savings Account	58.7
Compound Interest Account	17.0
Special Interest Account	12.1
Thrift Account	1.6
Checking Account	0.6
Don't Know	9.0
Miscellaneous	1.0
	<hr/>
	100.0
Number answering	521

[fol. 803]

Table XVI
Account Preferred
Total—Men and Women
Age 21-29

3. When you want to deposit money to earn interest,
which of these accounts do you prefer to open?

Account	Percent Naming Each Account %
Savings Account	53.0
Compound Interest Account	27.8
Special Interest Account	14.1
Thrift Account	1.2
Checking Account	0.6
Don't Know	2.1
Miscellaneous	1.2
	<hr/>
	100.0
Number answering	179

[fol. 804]

Table XVII
Account Preferred
Total—Men and Women
Age 30-44

3. When you want to deposit money to earn interest, which of these accounts do you prefer to open?

Account	Percent Naming Each Account %
Savings Account	58.2
Compound Interest Account	23.7
Special Interest Account	11.6
Thrift Account	0.9
Checking Account	0.2
Don't Know	4.9
Miscellaneous	0.5
	<hr/>
	100.0
Number answering	398

[fol. 805]

Table XVIII
Account Preferred
Total—Men and Women
Age 45 and Over

3. When you want to deposit money to earn interest, which of these accounts do you prefer to open?

Account	Percent Naming Each Account %
Savings Account	59.5
Compound Interest Account	17.0
Special Interest Account	7.6
Thrift Account	1.5
Checking Account	1.2
Don't Know	11.4
Miscellaneous	1.8
	<hr/>
	100.0
Number answering	338

fol. 806]

Table XIX

Bank Preferred for Savings Account
Total—Men and Women
Savings Account

3a. In what type of financial institution do you prefer
to open such an account? Where respondents would prefer
to go for a Savings Account.

Institution	Percent Naming Savings Account %
Savings Bank	53.4
Any or All Banks	5.7
Commercial Bank	2.2
Business Bank	0.9
Regular Bank	1.6
National Bank	8.9
Federal Bank	4.3
Savings and Loan Assn.	5.4
Trust Company	3.8
Miscellaneous	9.9
No Preference	0.5
Don't Know	3.4
	<hr/>
	100.0
Number answering	558

[fol. 807]

Table XX

Bank Preferred for Compound Interest Account
Total—Men and Women

Compound Interest Account

3a. In what type of financial institution do you prefer to open such an account? Where respondents would prefer to go for a Compound Interest Account.

Institution	Percent Naming Compound Interest Account %
Savings Bank	39.5
Any or All Banks	8.3
Commercial Bank	7.9
Business Bank	2.3
Regular Bank	1.4
National Bank	5.6
Federal Bank	4.2
Savings and Loan Assn.	10.2
Trust Company	3.3
Miscellaneous	10.7
No Preference	1.9
Don't Know	4.7
	<hr/>
	100.0
Number answering	215

[fol. 808]

Table XXI

Bank Preferred for Special Interest Account
Total—Men and Women

Special Interest Account

3a. In what type of financial institution do you prefer to open such an account? Where respondents would prefer to go for a Special Interest Account.

Institution	Percent Naming Special Interest Account %
Savings Bank	29.8
Any or All Banks	12.5
Commercial Bank	3.8
Business Bank	1.9
Regular Bank	2.9
National Bank	7.7
Federal Bank	5.8
Savings and Loan Assn.	9.6
Trust Company	10.6
Miscellaneous	4.8
No Preference	3.8
Don't Know	6.7
	<hr/>
	100.0
Number answering	104

[fol. 809]

DEFENDANT'S EXHIBIT DD

Weighted Results—Three Tables

The sample used in this study contained 406 men and 522 women.

Actually the population at Nassau County is about 49% male and 51% female.

The results for men and for women were so similar that it was apparent that no weighting at the obtained figures

was necessary because the weighted results would not be substantially different from the unweighted.

In order to substantiate this belief and demonstrate its validity to the Court, we have calculated results (for 49% male and 51% female) weighted to represent men and women exactly. The weighted figures are given in *italic* beside the corresponding unweighted figures which are *unin.* . . .

Of the 83 figures reported in these 3 tables (not including total "percents") only the four figures in brackets vary from the weighted result by more than 1%. The largest variation is 2.8% (Table VII, "Thrift Account column", "Don't Know", row).

[fol. 810]

Table I

Description of Accounts
Total—Men and Women

We are making a survey of some of the services offered and advertised by financial institutions. By financial institutions we mean banks of all types and savings and loan associations.

1. Will you please describe what each of the following services is.

	Savings Account %		Compound Interest Account %		Special Interest Account %		Thrift Account %	
Persons saying "I don't know"	7.2	7.1	53.3	52.3	62.7	61.8	52.7	52.1
Persons making inaccurate statements	2.9	3.0	5.4	5.5	14.1	14.5	25.1	25.6
Persons making indefinite statements	4.1	4.0	0.5	.6	1.8	1.8	2.7	2.7
Persons making accurate statements	85.8	85.9	34.2	34.8	14.5	14.8	7.8	7.7
Persons saying "It is the same as a savings account"	—		6.6	6.8	6.9	7.2	11.7	11.9
	100.0		100.0		100.0		100.0	
Number answering	927		925		924		927	

[fol. 811]

Table VII

Financial Institutions Said to Offer Accounts
Total—Men and Women

2. Will you please state what kind or kinds of financial institutions offer each of these services. By financial institutions we mean banks of all types and savings and loan associations.

	Savings Account %	Compound Interest Account %	Special Interest Account %	Thrift Account %
Savings Bank.....	[51.3 51.4]	24.1 24.4	16.7 16.7	26.7 26.7
Any or All Banks.....	17.7 17.9	8.0 8.0	9.7 9.9	8.5 8.0
Commercial Banks.....	3.6 3.6	5.3 5.3	7.9 7.7	4.8 4.1
Business Bank.....	0.7 .7	3.0 2.9	3.9 3.9	1.1 1.0
Regular Bank.....	1.1 1.1	0.5 .6	0.4 .5	0.4 .5
Ordinary Bank.....	0.4 .4	0.1 .1	— .0	0.2 .10
General Bank.....	0.1 0.1	— .0	0.3 .4	0.1 .1
National Bank.....	7.0 6.9	5.1 5.2	6.1 6.1	4.3 4.2
Federal Bank.....	3.4 3.3	2.8 2.7	3.2 3.1	1.4 1.6
Local Bank.....	1.4 1.5	0.8 .7	1.1 1.2	1.2 1.2
Savings and Loan Assn..	4.5 4.5	2.8 2.9	3.4 3.4	2.6 2.5
Trust.....	4.2 4.1	2.7 2.8	3.7 3.8	2.2 2.0
Miscellaneous.....	6.1 5.9	3.5 3.4	4.7 4.7	5.9 6.3
Don't Know.....	10.5 9.7	[48.2 47.0]	46.0 45.2	[50.1 52.9]
	112.0	106.9	107.1	109.5
Number answering.....	927	925	924	927

[fol. 812]

Table XIII

Account Preferred
Total—Men and Women

3. When you want to deposit money to earn interest, which of these accounts do you prefer to open?

Account	Percent Naming Each Account	
	%	%
Savings Account	57.7	57.1
Compound Interest Account	21.9	23.0
Special Interest Account	10.7	10.5
Thrift Account	1.2	1.2
Checking Account	0.6	.7
Don't Know	6.8	6.4
Miscellaneous	1.1	1.2
	100.0	
Number answering	927	

DEFENDANT'S EXHIBIT EE
(In Part)
Typical bank advertisements

(Here follow 4 Photolithographs, side folios 813, 813a, 813b,
813c)

642A

THE NEW YORK TIMES, FRIDAY, JANUARY 5, 1951.

INCOME
ACCOUNTS

3%

PER ANNUM

**CURRENT RATE
TWICE YEARLY
JAN. 1st & JULY 1st**

**BY ACT OF CONGRESS
F.S.L.I.
INSURED up to \$10,000**



SAVINGS
AND LOAN ASSOCIATION
EAST PATENSON, N. J.

642B

THE NEW YORK TIMES, TUESDAY, JANUARY 2, 1951.





Do You Know?

ALL
INVESTMENTS
INSURED
UP TO
\$10,000.00

Open a savings account in **LAWN SAVINGS**

- Accounts opened before January 15th will receive full dividend credit for the month of January.
- **NEVER LESS THAN 3%**—for the past 28 years?
- Appropriate Investments for Pension Funds ... Perpetual Care Funds ... Legal Trust Funds ... Corporate and Individual Accounts?
- You can save any amount at any time and withdraw at your convenience?

LAWN

SAVINGS and LOAN ASSOCIATION

Resources over \$21,000,000

Ample surplus and reserves

3525 W. 63rd St., Chicago 29, Ill.
WAlbrook 5-6500

Member Cook County Council of
Lawn Savings & Loan Associations

LAWN SAVINGS

3525 W. 63rd St., Chicago 29, Ill.

Gentlemen:

Enclosed find \$_____ (send check for at least \$25.00). Open an account in following name(s)

☐ Just send Free Booklet.

NAME _____

ADDRESS _____

TEL. _____


CITY _____ STATE _____

THE NEW YORK TIMES,
SATURDAY, DECEMBER 30, 1950.

3⁰⁰ ON YOUR SAVINGS

- 3% interest per annum will be paid June 30, 1951
- Each account insured to \$10,000
- Send for one-by-mail plan

Great Western Savings
AND LOAN ASSOCIATION
706 South Hill St. • Los Angeles, Calif.



HIGHER
DIVIDENDS
on Savings

now paying
2½%
per annum
BONUS ACCOUNTS EARN
UP TO 1% EXTRA
Send for
Bonus Booklet C

SAVINGS
INSURED
up to
\$10,000

Start now...

Savings received by
the 10th earn divi-
dends from the 1st

"SAVE-BY-MAIL"
FORMS FREE

Hours: Daily, 9 to 3
Mondays to 6 P.M.



WEST SIDE
FEDERAL SAVINGS

and Loan Association

250 W. 57th St., at E'way
New York 19, N. Y.
Circle 7-3333



A THRIFT INSTITUTION SINCE 1892

184 Consecutive
INTEREST DIVIDEND
declared for 6 months ending Dec. 31, 1950

net rate of **2%** per annum

Deposits on or before Jan. 15
draw interest from the 1st

BUSHWICK
SAVINGS BANK

GRAND ST. AT GRAMM AVE., ELYRIA, N. Y.
Member Federal Deposit Insurance Corp.
Banking By Mail

3½%
PER ANNUM
PAID ON
SAVINGS
IN CALIFORNIA

SAVE BY MAIL

★ Each account insured
to \$10,000 by the Fed-
eral Savings and Loan
Insurance Corporation

★ Full earnings paid
from the 1st on all
accounts opened
by the 15th

UNITED SAVINGS
AND LOAN ASSOCIATION
A WESTERN FEDERAL A.

[fol. 814] DEFENDANT'S EXHIBIT FF FOR IDENTIFICATION

Annual report of defendant for the year 1946

(Omitted pursuant to stipulation.)

DEFENDANT'S EXHIBIT GG FOR IDENTIFICATION

Article appearing in July, 1947 issue of Banking Magazine regarding defendant bank.

(Omitted pursuant to stipulation.)

DEFENDANT'S EXHIBIT HH FOR IDENTIFICATION

Article appearing in Magazine Digest regarding defendant bank.

(Omitted pursuant to stipulation.)

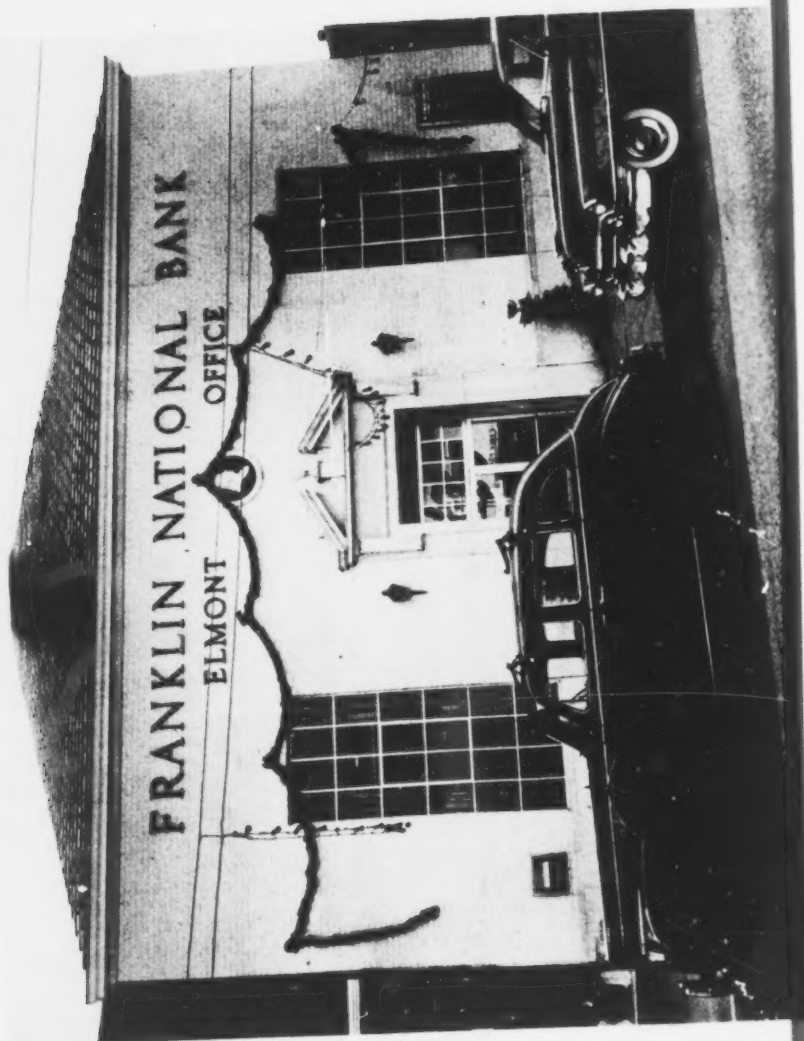
DEFENDANT'S EXHIBIT II FOR IDENTIFICATION

Article appearing in February, 1945 edition of Readers Digest regarding defendant bank.

(Omitted pursuant to stipulation.)

(Here follows 1 Photo, folio 815)

G44A





[fol. 816]

DEFENDANT'S EXHIBIT KK

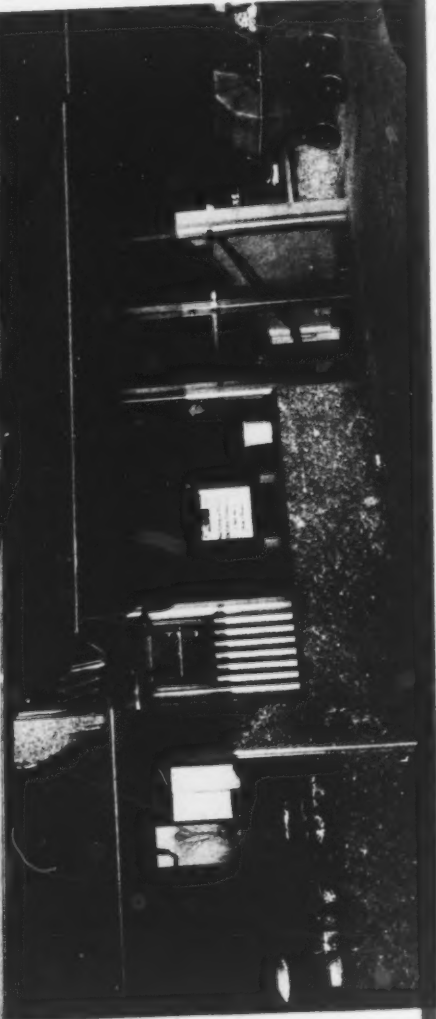
Photograph of Levittown Branch of defendant bank.

[OVER]

(Here follows 1 Photo, folio 817)

646A

FRANKLIN
NATIONAL
BANK
STOR
CHILDRENS WEAR



[fol. 818]

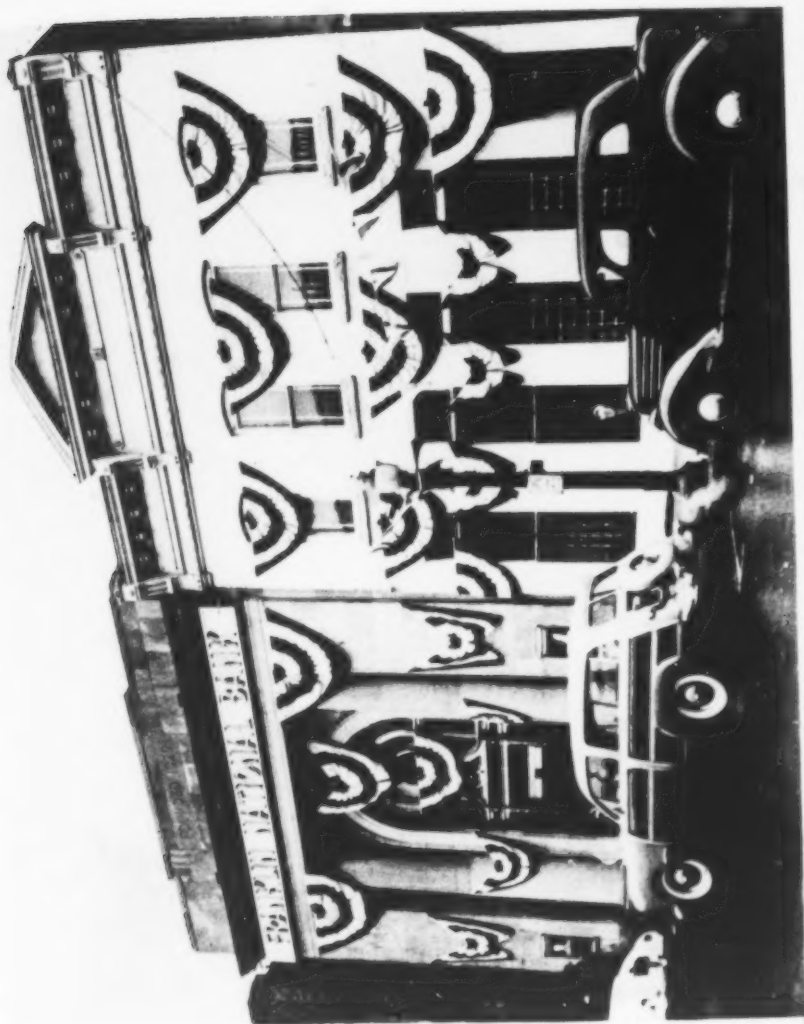
DEFENDANT'S EXHIBIT LL

Photograph of Rockville Centre Branch of defendant bank.

[OVER]

(Here follows 1 Photo, folio 819)

G48A



[fol. 820]

DEFENDANT'S EXHIBIT MM

Franklin National Bank of Franklin Square
Growth of Demand and Savings Deposits

Date (As of December 31)	Total Demand Deposits (Checking Accounts)	Total Savings Deposits (Pass Book Accounts)
1941.....	\$ 1,486,093.30	\$ 2,274,601.72
1942.....	2,010,887.48	2,959,368.10
1943.....	3,260,435.09	5,005,205.76
1944.....	4,236,252.03	7,423,059.97
1945.....	6,344,384.54	9,493,496.55
1946.....	7,993,836.35	10,085,748.68
1947.....	9,772,318.40	11,920,613.26
1948.....	12,859,556.67	13,691,526.93
1949.....	19,141,083.57	14,928,962.12
May 29, 1950.....	22,285,828.45	15,793,225.33
Jan. 29, 1951.....	34,771,246.75	25,240,370.31

[fol. 821]

DEFENDANT'S EXHIBIT NN

SUPREME COURT OF THE STATE OF NEW YORK, NASSAU
COUNTYTHE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs,
againstTHE FRANKLIN NATIONAL BANK OF FRANKLIN SQUARE,
Defendant.

STIPULATION

It is hereby stipulated by and between the attorneys for the parties in the above-entitled matter:

(a) that the statistical data annexed hereto as Exhibit A, is authentic and correct;

(b) that the same may be introduced in evidence by presentation to this Court of this stipulation with like force and effect as if witnesses competent to testify as to the accuracy and authenticity of the same had been called and had testified at the trial in this proceeding; and

(c) that the Attorney General hereby expressly reserves his right to object to the introduction in evidence of the statistical data hereto annexed upon the ground that such [fol. 822] statistical data is irrelevant or immaterial, or

both, all objections to the competency of the same being waived hereby.

Dated: New York City, New York,

January 15, 1951.

Nathaniel L. Goldstein, Attorney General of the
State of New York.

By (illegible) Attorney for Plaintiffs.

Alley, Cole, Grimes & Friedman, Attorney for Defendant.

EXHIBIT A

(a) Tabulation of Deposits of the Banks of Nassau County for the past five years.

(As of December 31)

All Deposits

(In thousands of dollars)

	All Natl Banks	All State Banks	All Commercial Banks	Savings Banks
1945.....	215,406	162,002	377,408	17,245
1946.....	220,336	162,842	383,178	20,541
1947.....	234,524	166,578	401,102	21,303
1948.....	250,374	174,213	424,587	21,934
1949.....	277,779	182,349	460,128	23,776

[fol. 823]

Time Deposits

1945.....	98,518	69,176	167,694	17,245
1946.....	111,871	75,663	187,534	20,541
1947.....	116,658	76,195	192,853	21,303
1948.....	120,237	76,501	196,738	21,934
1949.....	124,798	76,152	200,950	23,776

Demand Deposits

1945.....	116,888	92,826	209,714	
1946.....	108,465	87,179	195,644	
1947.....	117,866	90,383	208,249	
1948.....	130,137	97,712	227,849	
1949.....	152,981	106,197	259,178	

(b) Summary of Assets and Deposits of State Institutions as of Report Date Nearest to January 1st of Each Year shown

(New York State Complete)

(In thousands of dollars)

Date	Savings Banks			Banks		
	Assets	Deposits	No.	Assets	Deposits	No.
1946.....	\$ 9,171,941	\$ 8,292,000	131	\$489,399	\$457,798	122
1947.....	10,169,105	9,169,759	131	487,404	452,066	115
1948.....	10,882,519	9,814,535	131	479,735	442,251	114
1949.....	11,485,380	10,340,190	131	465,953	427,847	110
1950.....	12,326,940	11,102,297	130	424,417	387,468	108

[col. 824]

Trust Companies

	Assets	Deposits	No.
1946.....	\$23,679,337	\$21,748,068	150
1947.....	19,778,233	17,882,870	146
1948.....	20,197,291	18,278,336	141
1949.....	19,722,872	17,699,319	138
1950.....	19,926,706	17,899,216	136

(c) Summary of Assets and Amounts Due Shareholders of New York State Savings & Loan Associations as of Report Date Nearest to January 1st of Each Year Shown.

(In thousands of dollars)

Savings and Loan Associations

Date	Assets	Amount Due Shareholders	No.
1946.....	\$384,108	\$334,470	175
1947.....	433,525	381,926	172
1948.....	487,890	426,281	172
1949.....	536,889	471,048	171
1950.....	583,145	514,096	171

(d) Tabulation of Total Assets of all Federal Savings & Loan Associations in the State of New York for the Years 1944 through 1949

(As of December 31)

Year	Total Assets
1944	\$275,934,000
1945	344,740,000
1946	425,283,000
1947	508,055,000
1948	610,776,000
1949	691,283,000

[fol. 825] (e) Tabulation of Deposits of all National Banks in the State of New York for the Years 1945 through 1949

(As of December 31)

(In thousands of dollars)

Year	Total Demand Deposits	Total Time Deposits	No.
1945.....	\$13,009,744	\$1,413,759	399
1946.....	10,601,992	1,629,764	392
1947.....	10,758,126	1,632,590	389
1948.....	10,141,182	1,723,345	386
1949.....	10,332,772	1,812,125	382

DEFENDANT'S EXHIBIT OO FOR IDENTIFICATION

Opinion of Comptroller of the Currency, dated July 10, 1939, regarding the right of National Bank to use the word savings.

(Omitted pursuant to stipulation)

[fol. 826]

DEFENDANT'S EXHIBIT PP

Form 2129-1 of the Treasury Department, Office of Comptroller of the Currency.

(Here Follow 2 Photolithographs, side folios 827, 827a)

FORM 990-1
TREASURY DEPARTMENT
COMMISSIONER OF THE CUSTOMS - BUREAU OF
(Revised October 1930)

(PLEASE FOLD THIS SIDE OUT)

F. R. Dist. No. 2

Charter No. 15977

REPORT OF EARNINGS AND DIVIDENDS OF the FRANKLIN NATIONAL BANK OF FRANKLIN SQUARE

for 6 and 12 months ended December 31, 1920.
(Place at bank)
FRANKLIN SQUARE (City or town) (P. O. Box 314) RARITAGE (County) NEW YORK (State)

Dividends declared in current 6 months ended December 31:			
On common stock, declared <u>July 18, 1920</u>	payable <u>August 1, 1920</u>	1920	\$30,000.00
On common stock, declared <u>Dec. 11, 1920</u>	payable <u>Dec. 15, 1920</u>	1920	27,000.00
On Class A preferred stock, declared <u>None</u>	payable <u>None</u>	19	None
On Class B preferred stock, declared <u>None</u>	payable <u>None</u>	19	None
Total dividends declared in current year ended December 31:			
	On common stock	6.9 %	\$57,000.00
	On Class A preferred stock	wa. %	None
	On Class B preferred stock	-- %	None

Capital stock paid in at end of period, par value:

Common	\$1,250,000.00
Class A preferred	None
Class B preferred	None
Total deposits at end of period	71,097,967.10

Section A.—SOURCES AND DISPOSITION OF EARNINGS

I. EARNINGS FROM CURRENT OPERATIONS:

(a) Interest and dividends on: (1) U. S. Government obligations.

(2) Other securities.

(b) Interest and discount on loans.

(c) Service charges and other fees on bank's loans.

(d) Service charges on deposit accounts.

(e) Other service charges, commissions, fees, and collection and exchange charges.

(f) Trust department.

(g) Other current earnings (itemize large amounts).

Premium on Mortgages sold \$114,738.21

(a) Total earnings from current operations.

2. CURRENT OPERATING EXPENSES:

(a) Salaries—officers (Number on pay roll at end of year 26).

(b) Salaries and wages—employees (Number on pay roll at end of year 207).

(c) Fees paid to directors and members of executive, discount, and advisory committees.

(d) Interest on time deposits (including savings deposits).

(e) Interest and discount on borrowed money.

(f) Taxes other than on net income.

(g) Reinsuring depreciation on banking house, furniture, and fixtures.

(h) Other current operating expenses (itemize large amounts).

(a) Total current operating expenses.

3. NET EARNINGS FROM CURRENT OPERATIONS.

4. RECOVERIES, TRANSFERS FROM VALUATION RESERVES, AND PROFITS (See note below):

(a) On securities:

(1) Recoveries and transfers from valuation reserves.

(2) Profits on securities sold or redeemed.

(b) On loans.

(c) All other (itemize large amounts).

(d) Total recoveries, transfers from valuation reserves, and profits.

5. LOSSES, CHARGE-OFFS, AND TRANSFERS TO VALUATION RESERVES (See note below):

(a) On securities.

(b) On loans.

(c) All other (itemize large amounts).

(d) Total losses, charge-offs, and transfers to valuation reserves.

6. PROFITS BEFORE INCOME TAXES.

7. TAXES ON NET INCOME: Federal \$1,227.00; State \$3,000.00.

8. NET PROFITS.

(Itemize losses from items 7, if a loss, show its net).

	Six months ended December 31		Year ended December 31	
	1920	1919	1920	1919
I. EARNINGS FROM CURRENT OPERATIONS:				
(a) Interest and dividends on:				
(1) U. S. Government obligations	108 289 27	189 098 49		
(2) Other securities	42 387 16	47 137 16		
(b) Interest and discount on loans	938 511 56	1 516 492 07		
(c) Service charges and other fees on bank's loans	83 407 73	143 702 92		
(d) Service charges on deposit accounts	100 506 52	178 032 77		
(e) Other service charges, commissions, fees, and collection and exchange charges	263 146 91	504 172 43		
(f) Trust department	None	None		
(g) Other current earnings (itemize large amounts)	451 581 17	278 412 51		
Premium on Mortgages sold				
(a) Total earnings from current operations	1 689 090 32	2 863 202 15		
2. CURRENT OPERATING EXPENSES:				
(a) Salaries—officers (Number on pay roll at end of year 26)	95 503 39	171 189 39		
(b) Salaries <u>and</u> wages—employees (Number on pay roll at end of year 207)	275 410 53	437 875 26		
(c) Fees paid to directors and members of executive, discount, and advisory committees	5 540 00	11 540 00		
(d) Interest on time deposits (including savings deposits)	135 875 66	248 407 48		
(e) Interest and discount on borrowed money	3 787 66	4 342 48		
(f) Taxes other than on net income	10 152 18	27 488 33		
(g) Reinsuring depreciation on banking house, furniture, and fixtures	18 000 00	36 000 00		
(h) Other current operating expenses (itemize large amounts)	445 196 88	784 566 68		
(a) Total current operating expenses	949 866 30	1 681 609 92		
3. NET EARNINGS FROM CURRENT OPERATIONS	739 224 02	1 181 592 23		
4. RECOVERIES, TRANSFERS FROM VALUATION RESERVES, AND PROFITS (See note below):				
(a) On securities:				
(1) Recoveries and transfers from valuation reserves	None	None		
(2) Profits on securities sold or redeemed	207 108 10	230 157 43		
(b) On loans	None	None		
(c) All other (itemize large amounts)	67 71	67 71		
(d) Total recoveries, transfers from valuation reserves, and profits	208 075 21	230 805 14		
5. LOSSES, CHARGE-OFFS, AND TRANSFERS TO VALUATION RESERVES (See note below):				
(a) On securities	1 699 16	8 471 59		
(b) On loans	213 343 89	248 266 08		
(c) All other (itemize large amounts)	14 463 49	32 631 27		
(d) Total losses, charge-offs, and transfers to valuation reserves	231 506 54	289 169 94		
6. PROFITS BEFORE INCOME TAXES	715 785 89	1 123 227 73		
7. TAXES ON NET INCOME: Federal \$1,227.00; State \$3,000.00	125 828 00	398 000 00		
8. NET PROFITS	300 753 29	573 227 73		

Notes.—The term "Valuation reserve" for the purposes of Items 4 and 5 (and certain D) means all consolidated charge-offs, valuation allowances, and similar reserves derived from loans, securities, and other assets to provide for bad debts and other losses. Such reserves relate for the most part to loans and securities, and certain D) the loans provided for a replacement of these reserves. Loans and securities, when desired, should be included in Item 4 and 5. Transfers from reserves for loans on securities should be included in Item 4(c) and on loans in Item 4(b); transfers to such reserves should be included in Item 4(c) and 4(b). These "Valuation reserves" do not include reserves set up for doubtful accounts (such as reserves for contingencies), or reserves set up by charges to current operating expenses (such as reserves for current provision on securities).

12-5077-1

652B

Section B.—UNDIVIDED PROFITS ACCOUNT

	Six months ended December 31	Year ended December 31
9. UNDIVIDED PROFITS AT BEGINNING OF PERIOD.....	\$ 27 860 18	\$ 25 395 76
10. NET PROFITS FOR CURRENT PERIOD..... (Same as item 9 of this report, if a loss, show in red)	300 751 89	273 287 73
11. CREDITS TO UNDIVIDED PROFITS RESULTING FROM:		
(a) Withdrawals from reserve for dividends payable in common stock.....	NONE	NONE
(b) Withdrawals from reserves for other undeclared dividends.....	NONE	NONE
(c) Withdrawals from retirement account for preferred stock.....	NONE	NONE
(d) Withdrawals from reserves for contingencies, etc.....	NONE	NONE
(e) Withdrawals from surplus account.....	NONE	NONE
(f) Consolidation with South Shore Trust Co. (Reduction of capital stock not repaid to shareholders).....	37 000 00	37 000 00
(g) Assessments paid for impaired capital stock.....	NONE	NONE
(h) Voluntary contributions to surplus or profits.....	1 234 285 02	1 234 285 02
(i) Total.....	1 271 285 02	1 271 285 02
12. TOTAL, Item 9 plus items 10 and 11i.....	1 549 096 49	2 079 696 49
13. DEDUCTIONS FROM UNDIVIDED PROFITS RESULTING FROM:		
(a) Transfers to reserve for dividends payable in common stock.....	NONE	NONE
(b) Transfers to reserves for other undeclared dividends.....	NONE	NONE
(c) Transfers to retirement account for preferred stock.....	NONE	NONE
(d) Transfers to reserves for contingencies, etc.....	NONE	NONE
(e) Transfers to surplus account.....	1 008 000 00	1 200 000 00
(f) Cash dividends declared on common stock.....	NONE	NONE
(g) Transfers to common capital stock (stock dividends declared).....	27 000 00	87 000 00
(h) Dividends declared on class A preferred stock.....	NONE	NONE
(i) Dividends declared on class B preferred stock.....	NONE	NONE
(j) Total.....	1 027 000 00	1 287 000 00
14. UNDIVIDED PROFITS AT END OF PERIOD..... (Item 12 minus item 13j)	522 096 49	792 696 49

Section C.—TOTAL CREDITS TO PROFITS SINCE ORGANIZATION AND DISPOSITION OF PROFITS
(Please see that this section balances)

15. Surplus at end of period.....	\$ 3 000 000 00				
16. Undivided profits at end of period..... (Same as item 14 above)	522 096 49				
17. Reserves:					
(a) Reserve for dividends payable in common stock.....	NONE				
(b) Reserve for other undeclared dividends.....	NONE				
(c) Retirement account for preferred stock.....	NONE				
(d) Reserves for contingencies, etc.....	NONE				
TOTAL, \$..... (Items 17a-d inclusive)	560 500 00				
18. (a) Total dividends declared on common stock.....	25 863 31				
(b) Total dividends declared on class A preferred stock.....	15 537 60				
(c) Total dividends declared on class B preferred stock.....					
Total.....	\$ 674 829 40				
19. Net profits as national bank since organization..... (Add item 10, column 1, of this report to item 10 of last report on Form 2000)		\$ 2 300 830 36			
20. Reduction of capital stock not repaid to shareholders at the time of reduction.....		87 000 00			
21. Assessments paid for impaired capital stock.....		NONE			
22. Voluntary contributions to surplus or profits.....		2 300 999 02			
23. Profits and surplus of old organization at date of conversion to national system.....		NONE			
Total.....		\$ 674 829 40			

Section D.—RESERVE FOR BAD DEBTS AND OTHER VALUATION RESERVES
(See note on face other)

(See note on face side)

	RESERVE FOR BAD DEBTS LOSSES ON LOANS*		OTHER VALUATION RESERVES ON LOANS AND SECURITIES (See note on face side)			
			Loans		Securities	
24. Balance at beginning of calendar year.....	\$.	520 207 98	\$.	NONE	\$.	NONE
25. Recoveries credited to these reserves.....		8 835 73		NONE		NONE
26. Transfers to these reserves (Included in item 5).....		213 343 69		NONE		NONE
27. TOTAL (Sum of items 24, 25 and 26).....		742 387 40		NONE		NONE
28. Losses charged to these reserves.....		42 387 40		NONE		NONE
29. Transfers from these reserves (Included in item 4).....		NONE		NONE		NONE
30. Balance at end of period (Item 27 less items 28 and 29).....		700 000 00		NONE		NONE

*See up payment to Sec. 19(21) of National Reserve Code.

I, GEORGE H. BECKER, of the above-named bank, hereby certify that the foregoing statement is true, to the best of my knowledge and belief.

JANUARY 9, 1951
(Date)

U. S. GOVERNMENT PRINTING OFFICE 16-58944-5

BLEED THROUGH

[fol. 828]

DEFENDANT'S EXHIBIT QQ

Savings Bonds poster.

(Omitted pursuant to stipulation.)

DEFENDANT'S EXHIBIT RR

Form of payroll savings purchase order for United States Savings Bonds.

(Omitted pursuant to stipulation.)

DEFENDANT'S EXHIBIT SS

Literature regarding United States Savings Bonds.

(Omitted pursuant to stipulation.)

DEFENDANT'S EXHIBIT TT

March 29, 1947

Mr. Charles Schock
Deputy Superintendent of Banks
State of New York Banking Department
80 Centre Street
New York 13, New York

Dear Charlie

I would appreciate receiving a copy of the opinion rendered by the attorney-general regarding the use of the word "savings" by national banks.

[fol. 829] In my mind the evidence seems to be clear that a national bank can use the word "savings".

Sincerely, — —, President.

ATR/cae

DEFENDANT'S EXHIBIT UU

June 5, 1947.

Mr. Charles H. Schoch,
New York State Banking Department,
80 Centre Street,
New York, New York.

Dear Mr. Schoch:

We are enclosing a copy of an opinion that was received from Alley, Cole, Grimes & Friedman, Counsellors At Law, 30 Broad Street, New York City, in which they state that National Banks may use the word "Savings" in their advertising.

We asked for this opinion in connection with our recent correspondence and also a proposed group mortgage insurance plan which the bank is considering.

Very truly yours, — — —, President.

Enclosure, ATR/cac.

[fol. 330] IN SUPREME COURT OF THE STATE OF NEW YORK,
NASSAU COUNTY

DECISION AND OPINION OF CUFF, J.—dated May 29, 1951

The question before this court is the constitutionality of a statute of the State of New York. By means of a properly instituted proceeding, the New York Attorney General, in the name of the People of the State of New York, seeks an injunction against defendant, the Franklin National Bank of Franklin Square, Nassau County, New York, a corporation organized and existing under the National Banking Act of the United States, restraining it from using the words "saving" or "savings" in its publicity and from holding itself out as a savings bank. Plaintiff bases its suit upon the New York Banking Law Section 258, subdivision 1, which reads as follows:

"No bank, trust company, *national bank*, individual, partnership, unincorporated association or corporation other than a savings bank or a savings and loan asso-

ciation shall make use of the word 'saving' or 'savings' or their equivalent in its banking or financial business, or their equivalent in relation to its banking or financial business, nor shall any individual or corporation other than a savings bank in any way solicit or receive deposits as a savings bank; but nothing herein shall be construed to prohibit the use of the word 'savings' in the name of the Savings and Loan Bank of the State of New York or in the name of a trust company all of the stock of which is owned by not less than twenty savings banks. Any bank, trust company, national bank, individual, partnership, unincorporated association [fol. 831] or corporation violating this provision shall forfeit to the people of the state for every offense the sum of one hundred dollars for every day such offense shall be continued." (Emphasis supplied.)

The complaint alleges: that defendant is a national bank organized and existing under the National Banking Act (12 U. S. C. A. Sec. 12, et seq); that the New York Banking Law (Sec. 258 (1)) prohibits defendant from using "saving" or "savings" or their equivalent in its business or in soliciting or receiving deposits as a savings bank; that since 1947, defendant has been using "saving" and "savings" in its business; that it has solicited accounts by forms of publicity in which it has used the words "saving" and "savings"; that such use of those words was calculated to and did lead the public to believe that defendant was a savings bank "with all attendant safeguards and benefits" (Comp. para. 6); that the use of "saving" and "savings", "as aforesaid", violated said section 258 (1) of the New York Banking Law; that although the Banking Department demanded that defendant desist—using those words, defendant refuses to do so; that plaintiff has no adequate remedy at law. Plaintiff demands a permanent injunction against defendant restraining it from using the words "savings" or "saving" (1) in its advertising, (2) in its banking or financial business and (3) as it holds itself out as a savings bank, by the use of a sign, or in its soliciting or receiving of deposits.

[fol. 832] The answer admits: that defendant exists by

virtue of the laws of Congress (12 U. S. C. A. Sec. 12, et seq); that it is not authorized to do business or hold itself out as a savings bank; that it has been using "saving" and "savings" in its business since 1947 to solicit savings accounts; that it has refused to discontinue its use of those words, although the New York Banking Department has demanded that it desist; that in its use of those two words, it did not try to lead the public to believe that it was a savings bank, nor does the public so believe. For a complete defense, defendant alleges that Section 258 (1) of the New York Banking Law is unconstitutional and void in so far as it purports to relate to defendant and national banks because (a) it conflicts with the constitution and laws of the United States; (b) it unduly interferes with and hinders the operations of national banks and defendant, frustrating them in accomplishing the purposes for which they were organized and (c) it discriminates against defendant and national banks, handicapping them substantially in their competition for savings deposits with savings banks and savings and loan associations.

The allegations in the complaint charging defendant with fraudulently simulating a savings bank and fraudulently holding itself out as a savings bank, were wholly unsupported by evidence at the trial. Defendant offered proof that when its bank was remodeled, the architect and builder were instructed to erect a building which resembled not a savings bank, but a department store and that was done [fol. 833] (717). Those charges, I find on the evidence, were completely unfounded; they are dismissed.

The issue at bar is not one of wrongdoing. The Attorney General seems to acknowledge that by not seeking to recover the penalty of \$100 a day which Sec. 258 (1) provides for its violation. This case tests the power of the state to legislate as it has (Sec. 258 (1)) with relation to national banks. The Attorney General believes it has that power, while defendant is convinced that it has not.

Defendant has openly employed the words "saving" and "savings" as it publicizes the fact that it may receive from the public "savings deposits" in the belief that the state has no control over its use of those words. The defendant

relies upon certain provisions found in the Federal Reserve Act, which read in part as follows: national banks may

“* * * continue hereafter as heretofore to receive time and savings deposits and to pay interest on the same, but the rate of interest which such associations may pay upon such time deposits or upon savings or other deposits shall not exceed the maximum rate authorized by law to be paid upon such deposits by State Banks or trust companies organized under the laws of the State in which such association is located” (12 U. S. C. A., Sec. 371).

I will treat with the evidence adduced at the trial. (Numerals in parentheses refer to the Stenographer's Minutes.)

[fol. 834] The proof offered by plaintiff need not be detailed, because defendant admits all of the facts upon which plaintiff rests its case. It challenges only the motives ascribed by plaintiff that defendant sought to represent itself as a savings bank. Defendant offered proof to negative that deception charge in the complaint. I admitted that evidence (although no proof of intent to deceive had been submitted by plaintiff) only because plaintiff proved and defendant admitted that defendant used the word “savings” and “saving” in its publicity, and I felt that that defendant was entitled to show that its motives in so doing were marked by good faith. I have disposed of the fraud angle of this litigation; it will not again be referred to.

Returning to the subject of evidence offered by defendant, several presidents and other officers of national banks, including Arthur T. Roth, the president of defendant bank, testified. The experience and long service of these men in the banking world were not questioned. They said compositely that deposits in national banks were of two types—demand and savings; that the latter, interest bearing deposits, were received, recorded and handled through a separate department of the bank; that the demand accounts were the usual deposits received by any commercial (as distinguished from savings) bank; that savings deposits were indispensable to the maintenance of their respective

banks (728-9) that they (except defendant since 1947) refrained from using the words "savings" or "saving" in their business, unwillingly, out of deference to the prohibition contained in Sec. 258 (1) of the New York Banking Law (152, 154, 210, 217); that instead of those words they used, perforce, the terms "thrift", "compound interest" and "special interest" in their signs, records (deposit slips and pass books) and publicity in describing their savings department and in making known that they had the legal right to receive savings deposits (152, 210, 236); that having to use those substitutes hampered them in attracting savings deposits (121, 210, 211, 213, 238); that they rated the handicap accordingly imposed upon them as "definitely handicapped" (151) "stumbling block" (226) "considerable handicap" (239, 242), "detrimental" (239) "tremendous" (236) and similarly; that there was only one savings bank—the Roslyn Savings Bank—in Nassau County; (this Court takes judicial notice of the fact that that bank is not centrally located in Nassau County; nor is it in or reasonably near any of the larger business or congested centres and is rather inaccessible thereto by means of transportation except automobile.)

To continue the résumé of the testimony of defendant's witnesses, they testified that the said Roslyn Savings Bank advertised to no great extent; that New York City savings banks (Nassau County is adjacent to New York City) and its savings and loan associations, as well as Nassau County savings and loan associations, advertise extensively (209) and aggressively for savings deposits through the media of newspapers, direct mail, periodicals, radio and other sources, putting defendant and national banks at a disadvantage in the competition for savings deposits because they emphasize the word "savings" (210); that [fol. 836] demand deposits compare with savings deposits in their respective banks as follows: John R. Evans, president of the First National Bank of Poughkeepsie for 10 years, a banker of 27 years (139-141) stated that 40% of the total deposits were savings (161); Augustus B. Weller, a banker for 29 years, president for 17 years of Meadowbrook National Bank with two branches in Nassau County, testified that in 1934 the savings accounts totaled twice the

demand accounts (215) while currently, the demand accounts are \$15,000,000 as compared with savings accounts of \$12,000,000 (219); that that ratio (about 5 to 4 demand over savings deposits) has been maintained in recent years (219-220); William H. Abel, president Central National Bank of Mineola (although only recently made president, Mr. Abel had been executive vice-president for five years and affiliated with the bank for 21 years) testified (233) that prior to 1950 demand deposits were \$4,000,000, savings \$3,000,000 (244); Mr. Roth, president of defendant, testified that from 1941 to 1948 savings deposits exceeded demand deposits (726) but since 1948 the reverse is true, to wit: 60% demand, 40% savings (738); John J. Keuthen, president of Wheatley Hills National Bank since 1936, testified that if questioned his answers would have been substantially the same as the other bank officials with the modification that whereas they state that their savings deposits totals have increased in recent years, his bank has not enjoyed that condition but on the contrary, since 1948, his savings deposits have decreased (259).

[fol. 837] The cross examination of the bank officials did not alter the figures given or opinions expressed. Plaintiff's counsel in each instance, developed the point that the bank of which the witness was an officer bettered its deposit position progressively in recent years. But that development, the witnesses said, was not peculiar to Nassau County or even New York State (153, 154, 221, 222, 226, 251). Inflation, I would say, could be a contributing factor to that condition. I do not think that that general increase in deposits in banks bears upon the problem at bar.

It was stipulated that the testimony of two other bank officials, who were in the courtroom, if called to the stand, would have been substantially the same as that given by the bank officials who had already testified, with the reservation that plaintiff was not conceding the correctness or truth thereof.

Mr. Evans (First National Bank of Poughkeepsie) made the important disclosure that his bank derived more profit from savings deposits than it did from demand deposits (161).

Defendant also introduced evidence concerning a sample

poll to show the public understanding of the following terms: "savings", "thrift", "compound interest" and "special interest" as they relate to bank accounts (278). The object of the defense in introducing this evidence was to demonstrate that the term "savings account" is well understood by the public; that when disposed to open a bank account, the public reacts to the power of suggestion which the word "savings" generates and turns to the savings [fol. 838] bank with its business; that the three terms which defendant and other national banks are forced in their publicity to substitute for "savings" are not well understood and do not attract depositors in anything like the numbers that the word "savings" does.

This poll was planned and executed under the auspices of Hofstra College, a well-known and highly regarded institution of higher learning with 3800 students studying the arts, sciences, etc., located at Hempstead, Nassau County, New York. Although defendant paid for the services rendered, the College was actually retained by the Nassau Clearing House Association (277), an organization consisting of all except a few of the Nassau County banks, which serves the common interest of its members (203, 204). The work of the poll was assigned to the Psychology Department of Hofstra. Its planning and setting up came under the jurisdiction and guidance of Matthew Chappell, professor of psychology at Hofstra and chairman of the Department of Psychology (278). He worked continuously on the task from beginning to end. His experience, education and knowledge are important in appraising the evidentiary value, if any, to be ascribed to the poll, because he was the key figure. His history, appearance and manner indicate that he is a highly educated person; he has spent much of his life in the educational field, which has included sampling of public opinion; his work has made him a Diplomat of the American Board of Examiners in professional psychology (281); while teaching at Columbia University of New York City, he engaged in research work in the field [fol. 839] of "public opinion and mass buying behavior" and since 1938 has continued that study (264-265); he worked about two years (1938-1940) with Psychological Corporation in the Market and Social Research Division,

making use of polling techniques in business and industry; he was employed (1940-1943) by C. E. Hooper, Inc., the firm which conducts the so-called "Hooper Rating" polls; he maintained his own office (1943-1947) as a consultant, conducting polls for business and industry (265); he wrote books on psychology and collaborated with Mr. Hooper, aforementioned, in writing a book entitled "Radio Audience Measurement" (266); since 1938 he has actively participated in from 50 to 100 polling activities to ascertain the public mind on different subjects (269).

Mr. Chappell was aided, as his immediate assistant, by Richard Brumbach, a professor of Hofstra's Psychology Department (560) and an associate director of its Psychological Workshop (561). He had experience relating to polls—their planning, execution and analysis (1945-1950) with a research company (562-563). The field workers were senior students at Hofstra and the others who collaborated on the poll were of its faculty. All persons who participated were paid for their services (644).

This poll is known in the art as "probability sampling" (292). The testimony reveals that it was meticulously planned, executed and analyzed (266, et seq.). The objective of those who set it up was to query adults residing in Nassau County without *any person* exercising judgment in the selection of those to be interviewed (276, 292). The [fol. 840] identities of the interviewees were arrived at solely by a mathematical process (289). The result was a strictly random selection of them (276). By the processes adopted, considered the best method in the sampling art, (277), all human judgment in the choice of interviewees (which may control the results of a poll (294) was eliminated (237)). One of the objectives of the poll—and an important one—was to afford to every adult member of the population of Nassau County, an equal chance, with all other adults, of becoming an interviewee (289). I find that that ambition was closely approached by reason of the careful, intelligent, unbiased application of those in charge. The same kind of unprejudiced and careful methods, which marked the planning and supervision, were pursued in the actual interviewing (288, et seq., 423-440). Mr. Chappell knew that defendant paid the expenses for the taking of the

poll (372) but he did not know that the poll was to be used in a lawsuit until after the work had been completed and the poll and its results had been presented to defendant (646). Not only those who planned and supervised the poll testified but also two of the interviewers were witnesses (423-440). Upon plaintiff's counsel's statement that he had 18 other workers (interviewers) in court ready to testify, a stipulation was entered into by counsel that if the others (the 18) testified, that their testimony would be substantially the same as the two who had testified without plaintiff conceding the accuracy or truth of same (441).

The poll produced the following results: only 15% *did not know* the meaning of the term "savings account", while 53.3%, 62.7% and 52.7%, respectively, *did not know* the meaning of the terms "compound interest account", "special interest account" and "thrift account". Only 19.5% gave an accurate statement as to the meaning of "thrift account", 21.4% as to "special interest account" and 40.8% as to "compound interest account". In this compilation, full credit for accuracy was given to answers to the effect that the meaning of the substitute terms was the same as "savings account".

Without regard to actual percentages, the answers develop the point which this court has appreciated all along by reason of common knowledge, viz.: that the public understands the meaning of the term "savings account", for what it really is, far better than it understands the meaning of any of the substitute terms. I am also satisfied, based upon all the proof herein and judicial notice, that the word "savings", when used with the word "account" in relation to a bank, provokes a much stronger appeal to the eye and understanding of the public than do the substitutes, when placed before persons disposed to open an interest bearing bank account.

Polls, as evidence, are not controlling, of course. Many are misleading; valueless.

The learned Deputy Attorney General vigorously opposes the consideration or even the admission of the poll evidence, as hearsay and not within any exception to the well known rule. Both sides have briefed the question. The use of polls as a test of public opinion by business, news-

papers, periodicals and others is growing; already it is [fol. 842] widespread (295). There is no doubt that that testimony which is usually called "hearsay" has formed part of the proof at bar. The attorney general argues that the answers of those interviewed as reported by the interviewers, upon which the poll rests for its usefulness, in particular, are pure hearsay. On that point Jerome Prince in his recent (1948) revision of "Richardson on Evidence" (Seventh Edition) calls that kind of proof original evidence. He says: "Where the mere fact that a statement was made, as distinguished from its truth or falsity, is relevant on a trial, evidence that such statement was made is original evidence and not hearsay" (Sec. 246). This proffered proof (the answers) is testimony that the interviewees made the answers to the questions which the witnesses swear they asked them. It is no more than that. A Court accepts or rejects in whole or in part *as a fact* that answers were made as reported by the witnesses, depending upon the reliance that the Court places on the testimony of the witnesses. The value of the answers as evidence is something else. But that the answers were made can be a fact. The weight to be given to the answers would depend upon the poll itself. That returns us to the question of whether the poll proof should be received in evidence at all.

A party endeavoring to establish the public state of mind on a subject, which state of mind can not be proved except by calling as witnesses so many of the public as to render the task impracticable, should be allowed to offer evidence concerning a poll which the party maintains reveals that state of mind. The evidence offered [fol. 843] should include calling the planners, supervisors and workers (or some of them) as witnesses so that the Court may see and hear them; they should be ready to give a complete exposition of the poll and even its results; the work sheets, reports, surveys and all documents used in or prepared during the poll taking and those showing its results should be offered in evidence, although the Court may desire to draw its own conclusions. In this trial the learned counsel for defendant adduced proof of the kind to which I have just referred. I think that the proof as to the poll should be received in evidence. I also am satisfied that the

conclusions drawn therefrom are worthy of some consideration. Plaintiff's objections to the admission of this proof are overruled.

There is a difference between savings banks and commercial banks, including national banks (*Bank of Redemption v. Boston*, 125 U. S. 60). The savings bank has no stockholders. It is owned, if owned at all, by the depositors; total amount that each depositor may deposit is limited; its officers are their employees whom they appoint to receive and invest their deposits which are to be returned to them with the earned interest upon reasonable demand. There are no profits, as such. Profits, if any, ultimately are returned to the depositors in the form of interest. The investments made by their officers are circumscribed. They may make no commercial loans (loans on unsecured notes or notes secured by personal property other than "legal investments"); the amounts of their mortgage loans on realty are surrounded by statutory restrictions re-[fol. 844] ferable to the appraised value of the pledged realty, its location, the nature and age of the improvement thereon, amortization arrangements, duration of loan and stability of borrower (Sec. 235 (6) N. Y. Banking Law).

The commercial (national) bank is owned by its stockholders. Its officers are the employees of the board of directors, who in turn are the elected representatives of the stock. Those officers are expected, in managing the bank, to produce profits, which go to the stockholders in the form of ordinary dividends. A commercial bank may make, in the exercise of the sound judgment of its officers, unsecured loans and loans secured by personalty, which may even be merchandise. There is no limit upon the total amount it may receive from each depositor. It may provide money on mortgage loans like the savings bank based upon the appraised value of the pledged realty, but there are not the other rigid restrictions which are imposed upon savings banks (12 U. S. C. A. 371). While national banks receive and record their savings deposits separately from their demand deposits, both are pooled and provide one working fund. Thus savings deposits control as much as demand deposits, the volume of lending and investing in which national banks indulge.

It has been said that the savings bank is a semi-public institution; that the state in its wisdom seeks to encourage those who will save, particularly in small amounts; that the state has furnished a haven for the thrifty. I do not wish to cast the slightest reflection upon commercial banks and their stability when I say that the legislation [fol. 845] with respect to savings banks enacted by this state over the years was unmistakably intended to render the savings bank as safe and sound as laws could, to the end that those small depositors, encouraged as I have said to save, would run the least possible risk of losing their funds, and, incidentally, would receive as much interest as safety would permit. The power and discretion of the officers of savings banks are indeed narrow and circumscribed.

The New York State legislatures, enacting laws from time to time, were always seeking to protect deposits in savings banks, it would seem, solely for the benefit of the depositors, to assure each depositor as far as laws could assure, that his or her deposit would always be available upon reasonable demand. That legislation, however, was enacted and the decisions in harmony therewith were written before the national government insured bank deposits in *all* banks—federal and state—up to \$10,000 (Chap. 967 Public Law 797, enacted Sept. 21, 1950). \$10,000 is the limit which a savings bank may accept from any one depositor (Chap. 592, Laws of 1951).

As the matter stands today, all deposits in national banks are insured by the United States Government in exactly the same way as deposits in savings banks are insured, by the U. S. Government. In the light of this development, has not one of the principal reasons for the studied protective legislation referable to savings banks, including Sec. 258 (1) *Supra*, and the protective attitude of the courts in their reflective decisions become academic? Is that arm of state [fol. 846] protection to reassure bank depositors needed any more?

Prompted by its traditional zeal to clothe its savings banks with the ultimate in known safeguards against financial loss by depositors, the State of New York, due to its more recent enactment (Sec. 258 (1) *Supra*), has extended itself to the point where it stands accused by the defendant

herein of attempting to preempt certain fields of the banking business essential to the national government in maintaining its system of banking (12 U. S. C. A. Sec. 371) and by this suit the state seeks to judicially eject from those fields an important cog in that system, albeit a creature of the United States Government—the national bank.

Giving appropriate consideration to the evidence adduced herein by defendant, which proof is either not disputed or not successfully challenged, it is evident that Sec. 258 (1) of the New York Banking Law and Sec. 371 of the Federal Reserve Act cannot be read together in harmony. There is a violent conflict of legislative authority. We are obliged to ascertain the extent of that clash and the damage. Is there impairment, hampering, embarrassment or restriction exerted upon national banks by the New York statute, as they endeavor to achieve the objectives which Congress contemplated for them? If there is, that is a fatal legislative transgression by a state law (*First National Bank v. Commonwealth*, 9 Wall 353, 362; *Davis v. Elmira Savings Bank*, 161 U. S. 275, 283; *McClellan v. Chipman*, 164 U. S. 347; *Waite v. Dowley*, 94 U. S. 527, 533).

[fol. 847] In specific terms, what does the New York statute seek to accomplish? The answer to that question will expose the inroads of the state statute, if any, upon the federal grant of power to national banks to receive "savings deposits". The statute may be divided into three, as far as this litigation goes, parts. The first part provides that "No * * * national bank * * * shall make use of the word 'saving' or 'savings' or their equivalent in its banking or financial business. The second part provides that no national bank shall make use of the equivalent of 'saving or savings' *in relation to* its banking or financial business." The third part forbids national banks "in any way (to) solicit or receive deposits *as a savings bank*" (Sec. 258 (1)). (Italics supplied.) I will discuss the third part first. A national bank is not a savings bank. Nevertheless, Congress has granted it the power to solicit and receive "savings deposits" (Sec. 371, *Supra*). Obviously any national bank (the defendant is one) availing itself of that power, will provide space and facilities within its walls where such deposits may be made by the public and be received

by the bank. That particular part of the bank of necessity will give off an air of sanctuary where savings are to be banked. To that extent the national bank would assume some of the attributes typical of an institution where savings are ordinarily deposited. I cannot perceive how such a situation could be avoided, if the national bank is to receive "savings deposits". Could it be that the authors of Section 258 (1) of the New York Banking Law intended to render that inevitable situation a violation of that law [fol. 848] and to subject the national bank which, perforce gave it expression, to the prescribed penalties? The provision "nor shall" a national bank "in any way solicit or receive deposits as a savings bank" (Sec. 258 (1) Supra), I consider refers to a national bank simulating a New York savings bank for purposes of deception (*People v. Binghamton Trust Co.*, 139 N. Y. 185, 190). The element of deception abhors this litigation, because as I have pointed out above, there was a complete failure of proof in plaintiff's case with respect thereto. Therefore, the "third" part of Sec. 258 (1) may be disregarded.

But the "first" and "second" parts of the statute are different. To begin with, defendant admits violating those provisions. I find that those parts of the law apply with directness and force to this case. As far as the issues herein presented are concerned, however, the provisions of the law which I have designated "first" and "second" parts may be considered together. The language would seem to be restrictive, confining its prohibitions to those occasions only when a national bank is engaged "in its banking and financial business" (Sec. 258 (1)), but when the nature of the provisions is considered, the prohibitions are actually all inclusive, because only when a national bank is engaged "in its banking and financial business" does it receive "savings deposits" and does it have reason to use the forbidden words "saving" and "savings". Inferentially, Sec. 258 (1) forbids a national bank, *inter alia*, to use those words or their equivalent

- [fol. 849] (1) in its display of signs on its own premises
 (a) even to indicate its right to receive "savings deposits";

- (b) even for directional purposes to guide its customers to the place where "savings deposits" may be received;
- (c) even to designate the proper window for such depositing;
- (d) even to print the words "savings deposits" on its deposit slips and pass books;
- (e) even to print or write those forbidden words in any of its accounting records (see Defendant's Ex. PP, which requires national banks to use the word "savings" in those reports to the Comptroller of the Currency)

and

- (2) in any form of its advertising or its publicity, which, of course, includes oral as well as written, as long as the utterance relates to its banking or financial business.

Other similar inferential injunctions imposed by the law in question could be cited. Those enumerated surely *hamp*er defendant in the exercise of the power bestowed upon it by Congress as it exerts " * * * such incidental powers as shall be necessary to carry on the business of banking" (12 U. S. C. A. Sec. 24). Receiving "savings deposits" is a part (the uncontradicted evidence indicates that it is a very [fol. 850] important part) of defendant's banking business. The evidence also reveals that defendant could not function without "savings deposits" (728, 729). Therefore, receiving such deposits becomes a necessary element in enabling defendant to prosecute its banking business and to render the service to the United States Government in maintaining its system of banking and to the public which Congress intended it should. If receiving "savings deposits" is a necessary part of defendant's banking business crippling obstruction placed in defendant's way amounts to *impairment* of defendant's banking business. Likewise, the prohibitions mentioned above, viz.: no signs, no printing, no advertising and no publicity, with the words "saving" or "savings" therein, *embarrasses* defendant and certainly *restricts* it "tremendously" (236) in obtaining "savings deposits". (First National Bank v. Fellows, 244 U. S. 416,

37 Sup. Ct. 734; *Federal Nat'l Bank & Trust Co. v. Enright*, 264 Fed. 236, 239; *Paton's Digest* (1940), p. 645).

To deny to defendant the right to invite the public by all proper means of expression at its disposal, to make "savings deposits" with it, is to curtail the power to receive such accounts, to reduce its effectiveness as an agency handling that kind of financing—in short, to defeat one of the main purposes for which it was created by Congress.

Under such conditions, one law or the other must give way. The State Law must yield to the Federal Law—the supreme law of the land (U. S. Const. Article VI).

[fol. 851] Commencing with *McCulloch v. Maryland* (4 Wheat. 316), the Supreme Court as well as other courts, has consistently held that a state statute may not defeat in whole or in part the objectives expressed or implied in an Act of Congress which is constitutional. The facts in some of those cases are: In the above case, the state vainly sought to impose a tax upon a branch bank of the Bank of the United States. In *Missouri ex rel. Burnes National Bank v. Duncan*, 265 U. S. 17, the state offense was legislation which forbade the appointment of national banks to serve as testamentary executors, while state trust companies competing with national banks were authorized to serve as such executors. In *First National Bank v. California* (262 U. S. 366), the invalidated state law provided for the escheat to the state of dormant deposits in a solvent national bank.

A quotation from *Easton v. Iowa*, 188 U. S. 220, typifies the attitude of the Supreme Court and provides a most obvious reason for its viewpoint. The court said: "That legislation (The National Banking Act) has in view the erection of a system extending throughout the country, and independent, as far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the states." (229). That decision also held that Congress " * * * having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred upon such banks and has the sole [fol. 852] power to regulate and control the exercise of their operations * * *". Page (238).

To continue with examples of state laws invalidated for interference with federal instrumentalities, in *Fidelity National Bank & Trust Co. v. Enright*, 264 F. 236 (W. D. Mo. 1920), the voided state law forbade a national bank to use the words "trust" or "trust company" in its advertising, where the fact was that the word "trust" was part of the national bank's name; the name having been approved by the Comptroller of the Currency according to the National Banking Act.

I consider that I have cited a sufficient number of varying, as to the nature of the interferences, cases to demonstrate the state of the law with regard to particular situations, some of which, in their facts, approximate the facts in this case (*Fidelity National Bank & Trust Co. v. Enright*, *supra*, for instance).

There is no doubt that creatures of the Congress are subject to states' police powers enacted into law (*Engel v. O'Malley*, 219 U. S. 128; 31 S. Ct. 190; 55 L. Ed. 128, affirming 182 Fed. 365), but the law which accordingly subjects them should be an exercise of a real police power. Plaintiff cites no case in line with the situation at bar which supports his contention that Section 258 (1) is police power legislation. The facts and law deny that contention in this situation because deposits (up to \$10,000) in national banks are insured federally the same as savings banks' deposits are insured (up to \$10,000). I must hold that Sec. 258 (1) is not that type of law.

Plaintiff concedes that Section 371 of the Federal Reserve Act upon which defendant relies, authorizes national [fol. 853] banks, without equivocation, to receive "savings deposits". Plaintiff argues, however that neither that Act of Congress nor any other authorizes a national bank to advertise the fact. The answer to that contention is that such a power may be implied, especially since Congress has provided for national banks " * * * such incidental powers as shall be necessary to carry on the business of banking" (12 U. S. C. A., Sec. 24).

One would be wholly unobserving who did not recognize that there is competition among banks in the banking world; that the daily press abounds with advertising by banks; that often the rate of interest paid on savings ac-

counts is stressed. A witness in this case testified as to that stressing (209).

It cannot be denied—and it is not—that national banks may advertise for deposits, including savings deposits. The Attorney General argues that in such national bank advertising, the terms “time accounts” should be used or “thrift accounts” or one or more of the other substitutes to give public notice that national banks may receive “savings deposits.” He would have them use any term except “savings deposits”—the very words found in the Act of Congress. Is there any reason why national banks in their publicity should use the term “time deposits” and not “savings deposits”? Those two terms are side by side in Section 371 (12 U. S. C. A.).

The Attorney General further contends that when Congress amended the Federal Reserve Act by specifying “savings deposits” as a kind of deposit which a national bank [fol. 854] may receive, that action was without effect and without meaning, because at the time and for long prior, national banks were receiving what actually were savings deposits by virtue of their authority to receive “time deposits” (12 U. S. C. A. Sec. 371). I cannot subscribe to that reasoning. On the contrary, because of the peculiar wording of the empowering provision: National banks may “* * * continue hereafter as heretofore to receive time and savings deposits and to pay interest on the same * * *”, I consider that Congress meant to accomplish two results: first, that national banks in the conduct of their business should have the benefit of people’s savings deposits and second, that all doubt about the right of national banks to receive such deposits should be dispelled. There had been some controversy concerning the right of a national bank to advertise and use the word “savings” which had been resolved in favor of the national banks by the administrative branch of the United States Government (Federal Reserve Bulletin, p. 18, (1915)). The choice of language by Congress was intended to legislatively put that dispute at rest. If the intendment of Congress was as I have indicated, a state law restricting the publicizing of the power thus granted would tend, may I repeat, to defeat the obvious objective of the law.

National banks may and do advertise (12 U. S. C. A., Sections 583-586). There are authorities directly in point. Paton's Digest (1940) holds that the right of a national bank to receive savings accounts necessarily includes the [fol. 855] incidental right to advertise as a national bank for such accounts (pg. 645). This author also expressed the same view in the 1926 edition of his Digest at page 1:226. To the same effect is 6 Fletcher's Cyclopedia of Corporations, Section 2508, pg. 305. There are federal departmental opinions holding similarly (1 Fed. Reserve Bulletin (1915), pg. 18). No judicial determination on the precise question has been cited in the briefs or in the textbooks.

I am satisfied that national banks, as they use the words "saving" and "savings" in advertising and publicizing that they may receive "savings deposits" are exercising an implied and incidental power conferred upon them by Acts of Congress (12 U. S. C. A., Sections 371 and 24).

The restrictive nature of New York Banking Law 258 (1) defeats the purposes for which Congress created defendant (12 U. S. C. A. 371). That defeat could be entire were defendant obligated to suspend for lack of enough savings deposits (728-9, 737), with which to operate its business. The New York Statute is unconstitutional.

Plaintiff's motions to strike out testimony and for judgment upon which I reserved decision are denied. Defendant's motion to dismiss the complaint at the end of the plaintiff's case upon which I reserved decision is denied. Defendant's motion made at the end of the whole case for judgment dismissing the complaint is granted with costs.

Judgment with costs in defendant's favor dismissing the complaint will be entered.

Thomas J. Cuff, J. S. C.

[fol. 856] IN SUPREME COURT OF THE STATE OF NEW YORK

STIPULATION AS TO PLAINTIFF'S EXHIBITS—June 9, 1952

It is hereby stipulated and agreed that the Exhibit 14 of plaintiff-appellant which was received and marked in evidence on the trial of this action be omitted from the printed record and that a descriptive statement be printed in lieu thereof; and

It is further stipulated and agreed that such omitted exhibit may be handed up on the argument of this appeal with the same force and effect as though incorporated in said printed record.

Dated, New York, June 9th, 1952.

Nathaniel L. Goldstein, Attorney General of the
State of New York, Attorney for Plaintiff-
Appellant; Alley, Cole, Grimes & Friedman, At-
torneys for Defendant-Respondent.

(J. 407) IN SUPREME COURT OF THE STATE OF NEW YORK
SUPPLEMENT AS TO DEFENDANT'S EXHIBITS—January 21, 1952

It is hereby stipulated and agreed that the following exhibits of Defendant Respondent which were received and marked in evidence or marked for identification on the trial of this action be and the same hereby are omitted from the printed record in the interest of economy and that a descriptive statement be printed in lieu thereof:

B, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S (except first two pages), T, U, V, W (for id.), X (for id.), Y, Z, AA, BB, EE (except first 4 pages), FF (for id.), GG (for id.), HH (for id.), II (for id.), OO (for id.), QQ, RR and SS.

It is farther stipulated and agreed that such omitted exhibits and unprinted portions thereof may be handed up on the argument of this appeal with the same force and effect as though incorporated in said printed record.

It is further stipulated and agreed that the Plaintiff-Appellant shall be furnished with at least twenty-five (25) copies of Defendant-Respondent's Exhibit C, and that 6 such copies shall be included in said printed record.

Dated, New York, January 21, 1952.

Nathaniel L. Goldstein, Attorney General of the
State of New York, By Irving Rollins, Attorney
for Plaintiff-Appellant; Alley, Cole, Grimes &
Friedman, Attorneys for Defendant-Respondent.

[fol. 858] IN SUPREME COURT OF THE STATE OF NEW YORK

STIPULATION SETTling CASE

It is hereby stipulated that an order may be entered settling this case without further notice.

Dated, June 30, 1952.

Nathaniel L. Goldstein, Attorney General of the State of New York, Attorney for Plaintiff-Appellant; Alley, Cole, Grimes and Friedman, Attorneys for Defendant-Respondent.

IN SUPREME COURT OF THE STATE OF NEW YORK

ORDER SETTling CASE

Upon the foregoing stipulation the foregoing case is herewith settled as the case in this action.

Dated, June —, 1952.

Thomas J. Cuff, J. S. C.

[fols. 859-862] IN SUPREME COURT OF THE STATE OF NEW YORK

ORDER FILING RECORD IN APPELLATE DIVISION

Pursuant to Section 616 of the Civil Practice Act, it is Ordered that the foregoing printed record be filed in the office of the Clerk of the Appellate Division of the Supreme Court in the Second Judicial Department.

Dated, June —, 1952.

Thomas J. Cuff, J. S. C.

[fol. 863] IN SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

NOTICE OF APPEAL TO COURT OF APPEALS—February 11, 1953

[Title omitted]

Sirs:

Please take notice, that the defendant, The Franklin National Bank of Franklin Square, hereby appeals to the Court of Appeals of the State of New York from the judgment of reversal in favor of the plaintiffs and against the defendant, entered in the office of the Clerk of the County of Nassau on the 11th day of February, 1953, which judgment was entered upon an order of the Appellate Division of the Supreme Court, Second Department, entered in the office of the Clerk of the Appellate Division of the Supreme Court, Second Department, on the 12th day of January, 1953, which said order reversed (one of the Justices dissenting) the judgment of this Court entered herein the office of the Clerk of the County of Nassau on the 8th day of June, [fol. 864] 1951, dismissing the complaint in the above-entitled action upon the merits after trial and directed judgment in favor of the plaintiffs; and the defendant appeals from each and every part of said judgment of reversal as well as from the whole thereof.

Dated: New York, N. Y., February 11, 1953.

Yours, etc., Alley, Cole, Grimes & Friedman, Attorneys for Defendant, 30 Broad Street, New York 4, N. Y.

To: Nathaniel L. Goldstein, Attorney General of the State of New York, Attorney for Plaintiffs, 80 Centre Street, New York 13, N. Y.

Ernest F. Francke, County Clerk, Nassau County, Supreme Court.

[fol. 865] IN THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT, BOROUGH OF BROOKLYN

Present: Hon. Gerald Nolan, Presiding Justice, Hon. William B. Carswell, Hon. Frank F. Adel, Hon. Henry G. Wenzel, Jr., Hon. Frederick G. Schmidt, Justices.

[Title omitted]

ORDER OF REVERSAL—January 12, 1953

The above-named The People of the State of New York, the plaintiffs in this action having appealed to the Appellate Division of the Supreme Court from a judgment of the Supreme Court entered in the office of the Clerk of the County of Nassau on the 8th day of June, 1951, dismissing the complaint on the merits after trial, herein, and the said appeal having been argued by Mr. Daniel M. Cohen, [fol. 866] Assistant Attorney General, of Counsel for appellant, and argued by Mr. Charles P. Grimes of Counsel for respondent, and due deliberation having been had thereon; and upon the opinion and decision slip of the Court herein, dated January 12th, 1953, heretofore filed:

It is ordered and adjudged, that the judgment so appealed from be and the same hereby is reversed on the law and the facts, with costs, and judgment directed for the plaintiff, with costs, restraining defendant, its officers, agents, servants and employees from advertising or otherwise using the word "saving" or "savings" in relation to its banking or financial business in its dealings with the public, and from in any way soliciting or receiving deposits as a savings bank; and it is

Further ordered, that the findings of fact contained in the decision and opinion of the trial Court, inconsistent herewith, are hereby reversed, and it is

Further ordered, that new findings are made as are indicated in the opinion and decision slip of this Court dated January 12th, 1953, which is expressly referred to for the purposes provided in Section 607 of the Civil Practice Act.

Carswell, Wenzel and Schmidt, JJ., concur; Nolan, P.J., dissents and votes to affirm with memorandum as set forth

in opinion and decision slip dated January 12th, 1953.
Adel, J., not voting.

Enter:

John J. Callahan, Clerk.

[fol. 867] Clerk's Certificate to foregoing paper omitted
in printing.

[fol. 868] IN SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF NASSAU

County Clerk Index No. 2982—1950

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs,
against

THE FRANKLIN NATIONAL BANK OF FRANKLIN SQUARE,
Defendant

JUDGMENT OF REVERSAL—February 11, 1953

An appeal having been taken by the above-named plaintiffs, the People of the State of New York, to the Appellate Division of the Supreme Court for the Second Judicial Department from a judgment of the Supreme Court entered in the office of the Clerk of the County of Nassau on the 8th day of June, 1951 dismissing the complaint herein on the merits after trial, and said appeal having been heard and said Appellate Division having by an order entered in the office of the Clerk of said Court on the 12th day of January, 1953 by a divided court reversed said judgment on questions of law and fact, with costs, and having reversed certain findings of fact and conclusions of law and having made new findings of fact and conclusions of law in place thereof, as indicated in the opinion and decision slip of said Appellate Division, dated January 12, 1953, filed in the office of the Clerk of the said Appellate Division on [fol. 869] January 12, 1953, and having directed judgment for the plaintiffs, the People of the State of New York

against the defendant, the Franklin National Bank of Franklin Square, with costs, restraining said defendant, its officers, agents, servants and employees from advertising or otherwise using the word "saving" or "savings" in relation to its banking or financial business in its dealings with the public, and from in any way soliciting or receiving deposits as a savings bank, and the remittitur on said appeal having been filed in the office of the Clerk of the County of Nassau on the 11th day of February, 1953, and the costs of said action and appeal having been taxed in the sum of Two thousand five hundred twenty-five and 85/100 dollars (\$2,525.85), it is, upon motion of Nathaniel L. Goldstein, Attorney General of the State of New York, attorney for the plaintiffs,

Ordered and adjudged, that the judgment so appealed from be and the same hereby is reversed upon questions of law and fact, that the findings of fact and conclusions of law contained in the decision and opinion of the trial court, which are inconsistent with the new findings of fact and conclusions of law made by the said Appellate Division contained in the opinion and decision slip of said court dated January 12, 1953 and filed in the office of the Clerk of the Appellate Division are hereby reversed and that the findings of fact and conclusions of law so made by the Appellate Division and contained and indicated in the opinion and decision slip of the said Appellate Division dated [fol. 870] January 12, 1953 and filed in the office of the Clerk of the said Appellate Division on January 12, 1953 be and the same are hereby made the findings of fact and conclusions of law of this court, and it is further,

Ordered and adjudged, that the defendant, the Franklin National Bank of Franklin Square, its officers, agents, servants and employees be and they are permanently restrained and enjoined "from advertising or otherwise using the word 'saving' or 'savings' in relation to its banking or financial business in its dealings with the public and from in any way soliciting or receiving deposits as a savings bank," and it is further,

Ordered and adjudged, that the plaintiffs, the People of the State of New York of Albany, New York, recover from the defendant, the Franklin National Bank of Franklin

Square, of No. 315 Hempstead Turnpike, Franklin Square, Long Island, New York, the sum of Two thousand five hundred twenty five and 85/100 dollars (\$2525.85) the costs of the action and appeal as taxed and that the plaintiffs have execution therefor.

Dated: Mineola, Long Island, N. Y., February 11, 1953.

Ernest F. Francke, Clerk.

[fol. 871] IN SUPREME COURT, APPELLATE DIVISION—SECOND DEPARTMENT

OPINION OF THE APPELLATE DIVISION

By: Nolan, P.J.; Carswell, Adel, Wenzel and Schmidt, JJ.

People, &c., ap. v. Franklin Nat. Bank of Franklin Square, res—Action by the People of the State of New York against a national bank for a permanent injunction, restraining defendant from violating subdivision 1 of section 258 of the Banking Law. Plaintiff appeals from a judgment dismissing the complaint on the merits after trial.

Judgment reversed on the law and the facts, with costs, and judgment directed for the plaintiff, with costs, restraining defendant, its officers, agents, servants and employees from advertising or otherwise using the word "saving" or "savings" in relation to its banking or financial business in its dealings with the public, and from in any way soliciting or receiving deposits as a savings bank.

Findings of fact inconsistent herewith are reversed and new findings are made as indicated herein.

Respondent admitted deliberate violation of the statute and failed to establish its defense of unconstitutionality.

Savings banks have developed in this state as a distinctive type of mutual institution, since their beginning, with special benefits and safeguards (*Mercantile Bank v. New York*, 121 U. S., 138). For almost a century only such banks [fol. 872] have been allowed by state law to put forth a sign as a savings bank (Laws of 1858, chap. 132). For almost half a century the only banks permitted to use the word "savings" in the State of New York have been the mutual savings banks (Laws of 1905, chap. 564). Thus

there was basis for a legislative finding that in the course of time the word "saving" or "savings" had become so associated with the idea of "savings bank" that, if used by another kind of bank, some people were apt to be misled into thinking it to be a mutual savings bank (*Herring, &c., Safe Co. v. Hall's Safe Co.*, 208 U. S., 554, 559, 9 L. R. A., 148; *Elgin Nat. Watch Co. v. Illinois Watch Co.*, 179 U. S. 665; 150 A. L. R., 1095, 1134-1135, and cases cited in annotation). In addition there is a presumption that there was sufficient basis for the Legislature to act (11 Am. Jur., Constitutional Law, sec. 132) which respondent failed to meet and overcome by competent proof.

The police power of the state is not limited to the preservation of public health and safety, but extends to the prevention of fraud, deceit and imposition (*Merchants Exchange v. Missouri*, 248 U. S., 365; *Hall v. Geiger-Jones Co.*, 242 U. S., 539). Such power may be exercised to protect not only the intelligent and prudent, but also the ignorant and rash, from being imposed upon (*Dillingham v. McLaughlin*, 264 U. S., 370, 374; *Dent v. West Virginia*, 129 U. S., 114, 122; *People ex rel. Bennett v. Leman*, 277 N. Y., 368, 375). Section 258 of the Banking Law is an exercise of the police power aimed at preventing a deception from being practiced upon the public (*People v. B. T. [fol. 873] Co.*, 139 N. Y., 185, 192). As such, its prohibition of the use of the words in question does not constitute an unreasonable deprivation of rights (*Dillingham v. McLaughlin*, *supra*).

In such a case it is not necessary that there be intent to deceive; the state may seek to prevent innocent, as well as intentional, deception (*Federal Trade Comm'n v. Algoma Co.*, 291 U. S., 67; *Quaker Oats Co. v. City of N. Y.*, 295 N. Y., 527; *General Motors Corp'n v. Federal Trade Comm'n*, 114 F., 2d, 33, 36). Nor did the establishment of the Federal Deposit Insurance Corporation vitiate the statute in question for it did not eliminate the need upon which the law was based. Since the assets of this corporation and the coverage it provides, are limited, its protection against loss is limited. Furthermore, it in no way prevents the public from being misled, to which protection it is entitled (*Federal Trade Comm'n v. Algoma Co.*, *supra*) and

for which purpose the statute was enacted (People v. B. T. Co., *supra*).

The state statute herein is not in conflict with federal law. National banks possess only the powers conferred by Congress (Colorado Bank v. Bedford, 310 U. S., 41, 48). It is conceded that the provision of the Federal Reserve Act relied upon by respondent (U. S. Code, title 12, sec. 371), does not expressly confer upon such banks the right to use the words "saving" or "savings" in their dealings with the public; and since both the state and federal statutes can consistently stand together it may not be implied that when Congress authorized national banks to [fol. 874] "continue * * * to receive * * * savings deposits" it intended thereby to supersede the state statute prohibiting them from advertising in a manner found to be misleading by the State Legislature (First Nat. Bank v. Missouri, 263 U. S., 640; Napier v. Atlantic Coast Line, 272 U. S., 605, 611; Maurer v. Hamilton, 309 U. S., 598, 614; Reid v. Colorado, 187 U. S., 137, 148; Savage v. Jones, 225 U. S., 501, 533-534).

Neither does the challenged statute unduly interfere with the operation of a federal instrumentality. While there is testimony that the prohibition contained therein imposes an advertising handicap on them in their efforts to increase their interest-bearing accounts, the undisputed evidence that such accounts have grown substantially, and that national banks have enjoyed continued prosperity notwithstanding said statute, refutes the claim that it is a "crippling obstruction."

National banks, being *privately owned* stock corporations in which the government has an interest, are not entitled to the privileges of government departments (Emer. Fleet Corp'n v. Western Union, 275 U. S., 415, 425-426) and are not entitled to the immunities of the United States, or any state or political subdivision thereof (National Labor Relations Board v. Bank of America, &c., 130 F., 2d, 624, 626-627, cert. den. 318 U. S., 791). State regulations under the police power are not invalid, even when they impose some burdens on the *national government* of the same kind as those imposed on citizens within the state's borders (Okla- [fol. 875] *homa Tax Comm'n v. Texas Co.*, 336 U. S., 342,

352; *Penn Dairies v. Milk Control Comm'n* 318 U. S., 261, 270-271). It follows that such a regulation is not improper solely because it places some burden on *national banks* (*First Nat. Bank v. Missouri*, 263 U. S., 640; *Hall v. Geiger-Jones Co.*, 242 U. S., 539).

Nor is the state statute herein discriminatory, for by its terms it applies equally to all commercial banks, state-chartered as well as nationally-chartered. For purposes of regulation, banks may be divided into different classes (12 Am. Jur., *Constitutional Law*, sec. 506, pp. 187-188); and savings banks, which do not operate under the same conditions as commercial banks, form a reasonable classification where, as here, such differentiation is required for a valid statutory purpose (*Provident Savings Institution v. Malone*, 221 U. S., 660, 666; *Mercantile Bank v. New York*, 121 U. S., 138, 161). Since the prohibition applies equally to all institutions in similar circumstances and operating under the same conditions, it is not such class legislation as is prohibited by constitutional provisions (12 Am. Jur., *Constitutional Law*, secs. 504 and 505, pp. 185-187 and cases cited; *Connolly v. Union Sewer Pipe Co.*, 184 U. S., 540; *Cotting v. Kansas City Stock Yards Co., &c.*, 183 U. S., 79).

Finally, the statute does not forbid the use of the expressions heretofore permitted by the state banking department (2 Sutherland "*Statutory Construction*" [3d ed.], sec. 5107, and cases cited); or in terms prohibit the voluntary publicizing of United States Savings Bonds in furtherance of [fol. 876] *government business* (*Davis v. Elmira Savings Bank*, 161 U. S., 275); nor do reports to government departments come within its purview.

CARSWELL, WENZEL and SCHMIDT, JJ., concur.

NOLAN, P.J., dissents and votes to affirm, with the following memorandum: Section 258 of the Banking Law is in conflict with the federal statute (Federal Reserve Act, U. S. Code, tit. 12, sec. 371), in so far as it *forbids* the use of the word "savings." I agree that the state has the power to protect the public, by preventing national banks from purporting to act as savings banks and even from using the word "savings" in a manner which might deceive depositors in that respect. The purpose should be accom-

plished by regulation, however, and not by a prohibition which would prevent even a verbatim statement by a national bank of the federal law, which specifically permits national banks to receive *savings* deposits.

ADEL, J., not voting.

[fol. 877] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 878] Affidavit of service (omitted in printing).

[fols. 879-880] IN COURT OF APPEALS OF STATE OF NEW YORK

At a Court of Appeals of the State of New York, held at Court of Appeals Hall in the City of Albany, on the sixteenth day of April, A. D. 1953.

Present, Hon. Edmund H. Lewis, Senior Associate Judge,
Presiding.

[Title omitted]

ORDER GRANTING MOTION FOR LEAVE TO FILE A BRIEF AMICUS
CURIAE

A motion having heretofore been made herein upon the part of the New York State Bankers Association for leave to file a brief amicus curiae, papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said motion be and the same hereby is granted.

A copy,

Gearon Kimball, Deputy Clerk (Seal).

[fol. 881] IN THE COURT OF APPEALS OF THE STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, Respondent,

v.

FRANKLIN NATIONAL BANK OF FRANKLIN SQUARE, Appellant

OPINION OF THE COURT OF APPEALS OF NEW YORK—July 14th, 1953

Desmond, J. Defendant is a national bank, organized under the National Bank Act (U. S. Code, tit. 12, § 21 et seq.). Pursuant to authorization by the Comptroller of the Currency, it transacts banking business in the village of Franklin Square, Nassau County, New York. In this suit, brought by the State because of alleged violations by defendant of subdivision 1 of Section 258 of the New York Banking Law, defendant has been restrained and enjoined "from advertising or otherwise using the word 'saving' or 'savings' in relation to its banking or financial business in its dealings with the public, and from in any way soliciting or receiving deposits as a savings bank". Section 258 (subd. 1, *supra*) is in full as follows:

"§ 258. *Prohibition of unauthorized savings banks and use of the word 'savings'; exceptions as to school savings.*

"1. No bank, trust company, national bank, individual, partnership, unincorporated association or corporation other than a savings bank or a savings and loan association shall make use of the word 'saving' or 'savings' or their equivalent in its banking or financial business, or use any advertisement containing the word 'saving' or 'savings,' or their equivalent in relation to its banking or financial business, nor shall any individual or corporation other than a savings bank in any way solicit or receive deposits as a savings bank; but nothing herein shall be construed to prohibit the use of the word 'savings' in the name of the Savings and Loan Bank of the State of New York or in the name of a trust company all of the stock of which [fol. 882] is owned by not less than twenty savings banks. Any bank, trust company, national bank, individual, part-

nership, unincorporated association or corporation violating this provision shall forfeit to the people of the state for every offense the sum of one hundred dollars for every day such offense shall be continued."

It is undisputed that defendant has, since 1947, used the words "saving" and "savings" in many different ways, in the advertising and conduct of its banking operations. It has, by advertising and otherwise, solicited "savings accounts", has put up over some of its tellers' windows, signs containing the word "savings", has a special department for "Children's Savings", refers in its literature and printed forms to its 'savings department' and, in general, it routinely and extensively uses the words "saving" and "savings" to bring to itself "savings deposits" in competition with savings banks and savings and loan associations in Nassau County and elsewhere. Thus it is clear, without further elaboration of the facts, that this national bank has in fact violated so much of Section 258 (subd. 1, *supra*) as prohibits the use of the two words "saving" and "savings". However, we find in the record no evidence at all that defendant has violated, or threatens or tends to violate, the other prohibition of the above-quoted statute, which runs against "soliciting or receiving deposits as a savings bank". Therefore, so much of the injunction as prohibits "soliciting or receiving deposits as a savings bank" is unwarranted and must be stricken regardless of anything else in the case (1 High on Injunctions [4th ed.] § 22: *Exchange Bakery & Restaurant v. Rifkin*, 245 N.Y. 260, 265, 28 Am. Jur., Injunctions, § 29).

[fol. 883] That brings us to our real question: is the State statute above quoted unconstitutional as contravening a controlling and over-riding Federal statute on the same subject, and as interfering with the operations of a national bank?

First, as to whether there is a contrary Federal statute: the enactments which, according to appellant, authorize it, as a national bank, to use and advertise the word "saving" or "savings" are in the Federal Reserve Act, and are Sections 371 and 583-586 of title 12 of the United States Code. The statutory language on which appellant relies is in Section 371 (U.S. Code, tit. 12), as follows: "Any such

[national banking] association may continue hereafter as heretofore to receive time and savings deposits and to pay interest on the same, but the rate of interest which such association may pay upon such time deposits or upon savings or other deposits shall not exceed", and in Sections 583-586 (U.S. Code, tit. 12 [now in U.S. Code, tit. 18, § 709]), which (in a negative sort of way) authorize national banks to advertise, and which contain no prohibition against the use, in such advertising, of the word "saving" or the word "savings" (see, also, U.S. Code, tit. 12, § 24, as to "incidental powers" of national banks, and *Hernandez v. First Nat. Bank*, 125 Neb. 199, 205). Defendant-appellant says that the matter is as simple as this: Congress has (expressly) licensed these national banks to receive "savings deposits" and pay interest on "savings", and has (inferentially) licensed them to advertise to the public the provision of such banking services. So, says appellant, we have a direct conflict between the authorizations of the Federal statutes and the prohibitions of the State Banking Law.

[fol. 884] There is no dispute as to the respective roles which the United States Government and the several States play, generally, in regulating national banks. Under Section 8 of Article I of the Federal Constitution, Congress has power to, and does, incorporate national banks and has the paramount power of regulating them; any applicable Federal laws are supreme in the field; national banks are subject in many ways to the general laws of the States in which they exist, and must abide by State regulations insofar as the latter do not collide directly with Federal laws, and insofar as they do not frustrate national banking policy or impair the position of national banks in discharging their duties; national banks must obey all non-discriminatory State laws which do not interfere with the functioning of the banks, and which do not contravene Federal laws (*First Nat. Bank v. California*, 262 U.S. 366, 368; *Burnes Nat. Bank v. Duncan*, 265 U.S. 17; *Lewis v. Fidelity Co.*, 292 U.S. 559, 566; *Seabury v. Green*, 294 U.S. 165, 169; *Jennings v. U.S.F. & G. Co.*, 294 U.S. 216; *Anderson Nat. Bank v. Lockett*, 321 U.S. 233; *Roth v. Delano*, 338 U.S. 226, 230; *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 441; *Lauer v. Bayside Nat. Bank*, 244 App. Div. 601; *Matter of Baldwins-*

ville Fed. Sav. & Loan Assn. [Van Wie], 268 App. Div. 414, 422, 423; *Clark v. First Nat. Bank of Morrisville*, 130 Misc. 352, 354; *United States Pipe & Foundry Co. v. City of Hornell*, 146 Misc. 812, 815; *Matter of Keene*, 152 Misc. 424, 425; 7 Michie on Banks and Banking, ch. 15, §§ 3, 4, 5). Clearly, "a national bank is subject to state law unless that law interferes with the purposes of its creation, or destroys its efficiency, or is in conflict with some paramount federal law" (*Lewis v. Fidelity Co.*, *supra*, 292 U.S., at p. 566). [fol. 885] Since our State statute clearly and unambiguously forbids the very thing defendant is admittedly doing, our problem comes down to this: do the Federal statutes above cited contain, or amount to, an express authorization to national banks for such activity, that is, for using the State-prohibited words "saving" and "savings", or is the Federal statutory reference to "savings deposits" merely descriptive of a well-known type or kind of bank deposits, rather than a statutory license to use certain specified words, which in turn are forbidden in this State? We conclude, for reasons hereafter stated, that there is no direct conflict, between the Federal and State statutes, as to what national banks may and may not do by way of advertising for, and taking, "savings deposits". The State of New York does not prevent defendant from carrying on a particular kind of banking business, but does forbid a misleading description of that business.

State laws promoting fairness in business transactions should, of course, apply to national banks (*Schramm v. Bank of Cal.*, 143 Ore. 546, 578; *Steadman v. Redfield*, 67 Tenn. 337, 338-339; and see remarks of Justice Holmes, re competition, in *Abilene Nat. Bank v. Dolly*, 228 U.S. 1, 4). Our State law expresses an old, wise policy of protecting our citizens against being fooled (see *People v. Binghamton Trust Co.*, 65 Hun 384, *affd.* 139 N.Y. 185, as to the legislative purpose). So, read, our State statute is valid and enforceable despite a superficial, or seeming, contradiction between the phrasing of the two enactments. In other words, while the Federal statute prescribes the kind of business that national banks may carry on, the State statute, to avoid deception of our people, interdicts the use, in [fol. 886] that Federally-prescribed business, of certain

nonessential words, and there is no Federal statute relating to the use of those words, as such. Congress, while interested in protecting its creatures, the national banks, in the use of their proper powers, has no interest in their use of deceptive verbiage. The Attorney-General of New York, in his brief, makes it clear that this State does not claim for savings banks a monopoly on receipt of deposits of the "savings" type, but he insists that the State of New York is acting within its powers in seeing to it that members of the public are not misled into believing that commercial banks, like defendant, are mutual savings banks. He admits that the national banks are empowered to handle "savings" type deposits, and to advertise, but he argues that the State is not hampering either of those activities.

It is unnecessary here to describe in detail the differences between commercial and savings banks (see New York State Banking Law, arts. III, V, VI; 8 Michie on Banks and Banking, ch. 16, § 1; *Matter of Wilkins*, 131 Misc. 188, 193; *State v. People's Nat. Bank*, 75 N.H. 27; *Bank of Redemption v. Boston*, 125 U.S. 60, and see the learned opinion of the Special Term Justice in the present case, 200 Misc. 557, 566 *et seq.*). The difference, shortly stated, is this: commercial banks, State and national, are profit-making business corporations owned by stockholders, while, in New York at least, savings banks are mutual institutions, having no stockholders but earning money for the depositors, the fundamental purpose of their existence being protection of small deposits, and their principal method of accomplishing that purpose being caution and conservatism in investments (see 1 Morse on Banks and Banking [6th ed.], § 3).

[fol. 887] On the question of whether this New York statute unduly impedes national banks in carrying out their lawful purposes, it is significant, although not conclusive, that this record shows that none of the national banks operating in New York State, except defendant, have used the word "saving" or "savings", and that all of them (except defendant) have found it possible (although seriously inconvenient, say defendant's witnesses) to carry on the business of receiving this type of deposit, by the use, in their advertising and other literature and business forms, of

such synonymous expressions as "special interest account", "thrift account" and "compound interest account".

The New York Legislature's design and effort to prevent deception as to savings banks has a long history. The first enactment was in chapter 132 of the Laws of 1858, which, among other things, made it unlawful for a certain kind of commercial bank to "put forth a sign as a savings bank" (see, also, L. 1875, ch. 371: *People v. Doty*, 80 N.Y. 225). The prohibition against describing a commercial bank as a savings bank was added to and strengthened by a 1905 enactment (ch. 564), which forbade the use of the word "savings", by any but savings banks or building and loan associations. Thus, the general legislative purpose has been asserted for nearly a century and the statute in its present form is nearly a half century old. The validity of this purpose and the general validity of these statutes has, over and over again, been asserted by the State Attorney-General (see 1898 Atty. Gen. 265-267; 1902 Atty. Gen. 314-315; 1907 Atty. Gen. 473-475; 1908 Atty. Gen. 382-383). The 1907 opinion contained a specific holding that national banks had no right to hold themselves out as savings banks, or to [fol. 888] advertise as such (however, there was then no specific reference in the Federal laws to "savings accounts"). All of this adds up to this result: that the New York policy and method is an old and reasonable one, that it does not seem, when complied with by other national banks in this State, to have had seriously harmful effects on them, and that, accordingly, the legitimate national banking activity, of taking and advertising for interest accounts, is not substantially interfered with by the State's prohibition of the use of misleading words. Insofar as the record presents a question of fact as to the substantiality of that interference, the weight of evidence confirms the finding of the Appellate Division that the number of accounts of the "savings type" has increased greatly in those national banks in the State which have obeyed subdivision 1 of Section 258, and that those national banks "have enjoyed continued prosperity notwithstanding said statute" (281 App. Div. 757, 758).

We see no benefit to appellant's position in the fact that since 1905, our statute has permitted a "savings and loan

association" as well as a "savings bank" to use the words "saving" and "savings". The character and purposes of savings and loan associations are, under New York law (see Banking Law, art. X), so similar to those of savings banks as to call for the same kind of protection.

The judgment of the Appellate Division should be modified by striking from the second ordering paragraph thereof the words "and from in any way soliciting or receiving deposits as a savings bank" and, as so modified, affirmed.

FULD, J. (dissenting). While federal legislation explicitly authorizes national banks to receive "savings deposits" and to pay interest on "savings" (Federal Reserve Act, U.S. Code, tit. 12 § 371) and vests them with "such incidental powers as shall be necessary" (National Bank Act, [fol. 889] U.S. Code, tit. 12 § 24, subd. 7: see *Clement Nat. Bank v. Vermont*, 231 U.S. 120, 140), this state's Banking Law, in contrast, unequivocally prohibits a "national bank" from making "use of the word 'saving' or 'savings' or their equivalent in its banking or financial business, or use [of] any advertisement containing the word 'saving' or 'savings,' or their equivalent in relation to its banking or financial business" (Banking Law, § 258, subd. 1).

Mere reading of these two provisions reveals a conflict, patent and irreconcilable. New York's Banking Law provision severely limits the power of national banks to do exactly what the federal statute authorizes. (See, e.g., 2 Paton's Digest of Legal Opinions [1926 ed.], p. 1226; 1 Paton's Digest of Legal Opinions [1940 ed.], p. 645.) The right to accept "savings deposits" and maintain "savings accounts" can mean very little if the bank, by virtue of state statute, must hide that fact or announce it in terms that fail to make it clear. Indeed, to tell a bank that it can receive "savings deposits" and yet must not publicize the fact is very much like telling a property owner that he may produce vegetables, but must not water or cultivate them.

In a very real sense, the state statute hampers the conduct of banking activities deemed by the federal government to be necessary and beneficial. As the court at Special Term succinctly declared, "To deny to defendant the right to invite the public by all proper means of expression at its disposal, to make 'savings deposits' with it, is to curtail

power to receive such accounts, to reduce its effectiveness as an agency handling that kind of financing—in short, to defeat one of the main purposes for which it was created by Congress. Under such conditions, one law or the other [Vol. 890] must give way. The State law must yield to the federal law—the supreme law of the land (U.S. Const., art. I).” (200 Misc. 557, 571.)

The state acknowledges, as, of course, it must, that national banks are empowered, as an incident of their business, to receive “savings deposits” and maintain “savings accounts.” Since those activities are concededly legitimate and in the public interest, there is no basis for the claim that advertising them *in the precise language of the Federal Reserve Act* can be deceptive or harmful. If a national bank conducts only the type of business which the Federal Reserve Act sanctions and if it informs the public of the nature of that business by using only the exact language of the federal enactment, how may it be said—as it is (opinion of Desmond, J., p. 460)—that the state law serves the vital function “of protecting our citizens against being fooled”?*

Section 258 of the Banking Law, insofar as it prohibits national banks from quoting the very words of the Federal Reserve Act, authorizing them to receive and pay interest on “savings deposits”, clashes with the paramount federal law and, accordingly, must be stricken as unconstitutional. Cf., e.g., *Easton v. Iowa*, 188 U.S. 220, 229-230, 238; *First Nat. Bank v. California*, 262 U.S. 366, 368 *et seq.*; *Fidelity Nat. Bank & Trust Co. v. Enright*, 264 F. 236; *Springfield Inst. for Sav. v. Worcester Fed. Sav. & Loan Assn.*, 329 Mass. —, 107 N.E. 2d 315, certiorari denied 344 U.S. 84.)

[Vol. 891] The judgment of the Appellate Division should be reversed and that of Special Term affirmed, with costs in this court and in the Appellate Division.

*Virtually eliminated, it should be noted, is any risk of loss to those who maintain a “savings, time, or thrift account” in a national bank; such deposits, up to \$10,000 by any depositor, are insured by the Federal Deposit Insurance Corporation (Federal Deposit Insurance Act, U.S. Code, tit. 12, § 1813, subd. 1; § 1821).

Lewis, Ch. J., Conway, Dye and Van Voorhis, JJ., concur with Desmond, J.; Fuld, J., dissents in opinion in which Froesel, J., concurs.

Judgment accordingly.

[fol. 892] IN THE COURT OF APPEALS OF NEW YORK

REMITTITUR—July 14, 1953

[fol. 893]

No. 81

THE PEOPLE &c., Respondent,

vs.

THE FRANKLIN NATIONAL BANK OF FRANKLIN SQUARE,
Appellant

Be it Remembered, That on the 27th day of March in the year of our Lord one thousand nine hundred and fifty-three, The Franklin National Bank of Franklin Square, the appellant in this cause, came here unto the Court of Appeals, by Alley, Cole, Grimes & Friedman, its attorneys, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the Second Judicial Department. And The People &c., the respondent in said cause, afterwards appeared in said Court of Appeals by Nathaniel L. Goldstein, Attorney General.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

[fol. 894] Whereupon, The said Court of Appeals having heard this cause argued by Mr. Charles P. Grimes, of counsel for the appellant, and by Mr. Daniel M. Cohen, of counsel for the respondent, brief filed by amicus curiae, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is modified in accordance with the opinion herein and, as so modified, affirmed.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the

said Supreme Court, there to be proceeded upon according to law.

[fol. 895] Therefore, it is considered that the said judgment be modified &c., as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

Raymond J. Cannon, Clerk of the Court of Appeals
of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE

Albany, July 14, 1953.

I Hereby Certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

Raymond J. Cannon, Clerk (Seal).

[fol. 896] IN THE SUPREME COURT OF THE STATE OF NEW
YORK, COUNTY OF NASSAU, SPECIAL TERM, PART I

Present: HON. PERCY D. STODDART, Justice.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs,
against

THE FRANKLIN NATIONAL BANK OF FRANKLIN SQUARE,
Defendant

JUDGMENT OF AFFIRMANCE—filed July 29, 1953

An appeal having been taken by the above-named defendant, The Franklin National Bank of Franklin Square, to the Court of Appeals of the State of New York from

the judgment of reversal of this Court entered upon the order of the Appellate Division of the Supreme Court, Second Department, in the office of the Clerk of the County of Nassau on the 11th day of February, 1953, reversing the judgment theretofore entered in the office of the Clerk of the County of Nassau on the 8th day of June, 1951, dismissing the complaint herein on the merits after trial and upon such reversal granting judgment in favor of the plaintiffs, with costs, restraining the defendant, its officers, agents, servants and employees from advertising or otherwise using the word "saving" or "savings" in relation to its banking or financial business in its dealings with the public, and from in any way soliciting or receiving deposits [fol. 897] as a savings bank, and the defendant having appealed from each and every part of said judgment of reversal as well as from the whole thereof; and the said appeal having been duly argued at the said Court of Appeals, and after due deliberation the Court of Appeals having ordered and adjudged, that the said judgment so appealed from as aforesaid be modified by striking from the second ordering paragraph thereof the words "and from in any way soliciting or receiving deposits as a savings bank" and that as so modified the judgment of reversal be affirmed without costs and having further ordered and adjudged, that the proceedings therein be remitted to this Supreme Court, there to be proceeded upon according to law; and the remittitur from the said Court of Appeals having been filed herein, now on motion of Nathaniel L. Goldstein, Attorney General of the State of New York, attorney for the plaintiffs herein, it is hereby

Ordered and Adjudged, that the order and judgment of the said Court of Appeals be and the same are made the order and judgment of this Court; and it is further

Ordered and Adjudged, that the judgment entered herein on the 11th day of February, 1953, be and the same is hereby modified by striking from the second ordering paragraph thereof the words "and from in any way soliciting or receiving deposits as a savings bank" so that the second ordering paragraph reads as follows:

'Ordered and Adjudged, that the defendant the Franklin National Bank of Franklin Square, its officers,

agents, servants and employees be and they are permanently restrained and enjoined "from advertising or otherwise using the word 'saving' or 'savings' in relation to its banking or financial business in its dealings with the public," and it is further'

[fol. 898] and as so modified, the judgment entered herein on February 11, 1953, be and the same is hereby affirmed without costs.

Enter,

P. D. S., J. S. C.

[fol. 899] IN SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF NASSAU

[Title omitted]

AFFIDAVIT—filed July 29, 1953

STATE OF NEW YORK,

County of New York, City of New York, ss:

Daniel M. Cohen, being duly sworn, deposes and says:

1. He is an Assistant Attorney-General of the State of New York and is familiar with the above-entitled litigation.

2. By notice of appeal, dated February 11, 1953, the defendant Franklin National Bank of Franklin Square appealed to the Court of Appeals of the State of New York from the judgment of reversal in favor of the plaintiffs and against the defendant entered in the office of the Clerk of the County of Nassau on the 11th day of February, 1953, which judgment was entered upon an order of the Appellate Division of the Supreme Court, Second Department, entered in the office of the Clerk of the Appellate Division on the 12th day of January, 1953, which said order reversed the judgment of this Court entered herein in the office of the Clerk of the County of Nassau on the 8th day of June, 1951, dismissing the complaint herein after trial and which upon such reversal directed judgment in favor of the plaintiffs.

3. The Court of Appeals on July 14, 1953, having heard the appeal argued, ordered and adjudged that the Appellate Division of the Supreme Court appealed from be [fols. 900-901] modified in accordance with the opinion and as so modified affirmed. The sole modification provided for in the opinion of the court was for the deletion from the second ordering paragraph of the judgment entered herein on February 11, 1953, of the words "and from in any way soliciting or receiving deposits as a savings bank". As directed by the Court of Appeals remittitur dated July 14, 1953, the second ordering paragraph of the judgment of February 11, 1953, should read as follows:

'Ordered and Adjudged, that the defendant, the Franklin National Bank of Franklin Square, its officers, agents, servants and employees be and they are permanently restrained and enjoined "from advertising or otherwise using the word 'saving' or 'savings' in relation to its banking or financial business in its dealings with the public," and it is further'.

4. The remittitur of the Court of Appeals is being filed herewith.

5. The order and judgment of the Court of Appeals should accordingly be made the order and judgment of this Court and the judgment entered herein on February 11, 1953, should be modified in accordance with the direction of the Court of Appeals and except as so modified the judgment should be affirmed without costs.

6. No previous application for the relief sought herein has been made.

Daniel M. Cohen, Assistant Attorney General of
the State of New York.

Sworn to before me this 27th day of July, 1953.

Irving L. Rollins, Assistant Attorney General of
the State of New York.

[fol. 903] IN COURT OF APPEALS OF STATE OF NEW YORK

[Title omitted]

PETITION FOR APPEAL—September 29, 1953

Considering itself aggrieved by the final judgment of this Court entered on July 14, 1953, The Franklin National Bank, defendant herein, does hereby pray that an appeal be allowed to the Supreme Court of the United States from said final judgment and from each and every part thereof; that citation be issued in accordance with law; that an order be made with respect to the appeal bond to be given by said defendant, and that the amount of security be fixed by the order allowing the appeal; and that the material parts of the record, proceedings and papers upon which said final judgment was based, duly authenticated, be sent to the Supreme Court of the United States in accordance with the rules in such case made and provided.

Respectfully submitted, Cole, Grimes & Friedman,
Attorneys for Defendant-Appellant.

September 29, 1953.

[fol. 904] IN COURT OF APPEALS OF STATE OF NEW YORK

[Title omitted]

ORDER ALLOWING APPEAL—September 29, 1953

The Franklin National Bank having made and filed its petition praying for an appeal to the Supreme Court of the United States from the final judgment of this Court in this cause entered on July 14, 1953, and from each and every part thereof, and having presented its assignment of errors and prayer for reversal and its statement as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

Now, Therefore, It Is Hereby Ordered that said appeal be and the same is hereby allowed as prayed for.

It Is Further Ordered that the amount of the appeal bond be and the same is hereby fixed in the sum of \$250.00 with good and sufficient surety, and shall be conditioned as may be required by law.

It Is Further Ordered that citation shall issue in accordance with law.

Edmund H. Lewis, Chief Judge.

September 29, 1953.

[fol. 905] IN COURT OF APPEALS OF STATE OF NEW YORK

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR RELIEF

The Franklin National Bank, defendant in the above-entitled cause, in connection with its appeal to the Supreme Court of the United States, hereby files the following assignment of errors upon which it will rely in the prosecution of its appeal from the final judgment of the Court of Appeals of the State of New York entered on July 14, 1953.

The Court of Appeals erred:

1. In holding the New York statute, Section 258 (1) of the New York Banking Law, constitutional against the contention that the statute directly conflicts with the purposes of Congress and the paramount Federal laws, particularly as expressed in Section 24 of the Federal Reserve Act as amended (Ch. 6, §24, 38 Stat. 273; 12 U.S.C. §371) and Section 24 (7) of the National Bank Act as amended (R. S. 5136, 12 U. S. C. §24(7)).

2. In holding and concluding that Section 24 of the Federal Reserve Act neither expressly nor inferentially empowers national banks to advertise or in any way publicize the fact that they may accept "savings deposits", although the statute expressly authorizes national banks to accept such deposits.

[fol. 906] 3. In holding and concluding that national banks, although empowered to advertise the services which they legitimately may provide, must conform their advertising to a state statute which prohibits use of the very words employed in the enabling Federal legislation.

4. In holding and concluding that the defendant engages in "a misleading description" of its business and uses "deceptive verbiage" in characterizing savings deposits as "savings deposits" in its advertising although Section 24 of the Federal Reserve Act so characterizes certain of the deposits which national banks are expressly empowered to accept.

5. In holding and concluding that Section 258 (1) of the New York Banking Law does not, in violation of the Federal Constitution, unduly impede national banks in carrying out their lawful purposes and that the admittedly legitimate national banking activity of taking savings deposits is not substantially interfered with by the state's prohibition of the use of the words "saving", "savings" or their equivalent".

6. In holding and concluding that Section 258 (1) of the New York Banking Law does not unduly discriminate against national banks and handicap them in their competition with savings and loan associations and savings banks.

7. In permanently enjoining the Franklin National Bank of Franklin Square "from advertising or otherwise using the word 'saving' or 'savings' in relation to its banking or financial business in its dealings with the public."

[fol. 907] Wherefore, defendant, The Franklin National of Franklin Square, prays that the final judgment of the Court of Appeals be reversed, and for such other relief as the Court may deem fit and proper.

Cole, Grimes & Friedman, Attorneys for Defendant-Appellant.

[fol. 908] Citation in usual form showing service omitted in printing.

[fols. 909-910] Bond on appeal for \$250.00 approved and filed October 5, 1953 omitted in printing.

[fols. 911-913] Statement required by paragraph 2 rule 12 of the rules of The Supreme Court omitted in printing.

[fol. 914] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1953

No. 427

THE FRANKLIN NATIONAL BANK OF FRANKLIN SQUARE,
Appellant,

v.

THE PEOPLE OF THE STATE OF NEW YORK, Appellee

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION
OF PARTS OF RECORD TO BE PRINTED—filed November 6, 1953

a. Appellant adopts for its statement of points upon which it intends to rely in its appeal to this Court all of the points contained in its Assignment of Errors heretofore filed.

b. Appellant designates the following portions of the record herein for printing by the Clerk of this Court:

(1) The Printed Record on Appeal to the Court of Appeals of the State of New York.

(2) Opinion of the Court of Appeals dated July 14, 1953.

(3) Remittitur of the Court of Appeals dated July 14, 1953.

(4) Judgment of Affirmance dated July 29, 1953, entered in the Supreme Court, Nassau County.

(5) Petition for Appeal.

(6) Order Allowing Appeal.

(7) Assignment of Errors.

(8) Statement of Points to be Relied Upon and Designation of Parts of Record to be Printed.

Samuel O. Clark, Jr., Attorney for Appellant.

[fols. 915-916] CERTIFICATE OF SERVICE (Omitted in printing)

[fol. 917] (File endorsement omitted).

[fol. 918] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—December 7, 1953

Appeal from the Court of Appeals of the State of New York.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

(2215)